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FEDERAL REGULATION

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

Part 3

JULY 2, 1981

PEORIA, ILL.

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

90-375 O WASHINGTON : 1982

5401-23

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CONTENTS

Page

Opening statement of Senator Percy 1

WITNESSES

THURSDAY, JULY 2, 1981

Richard Carver, mayor, city of Peoria, Ill. 4

David P. Ransburg, president, L. R. Nelson Corp., Peoria, Ill.; Dennis Hoaglin, personnel director, Grigoleit Co., Decatur, Ill.; Richard C. Zinser, senior vice president, First Federal Savings of Peoria, Ill.; Marty Perlman, Perlman Carpet Co., Pekin, Ill.; and Herman Brummett, Apollo Oil Co., Peoria, Ill. 9

Prescott E. Bloom, Illinois State Senator, Peoria, Ill.; and John W. Castle, director, Illinois Department of Commerce and Community Affairs, Springfield, Ill. 21

Henry W. Holling, manager of governmental affairs, Caterpillar Tractor Co., Peoria, Ill.; Robert Carey, president, American Brick Co., Dolton, Ill.; Richard E. Burket, vice president, Archer Daniels Midland Co., Decatur, Ill.; Harvey J. Wexler, senior vice president, Continental Airlines, Washington, D.C.; Richard Cloyd, manager of public affairs, Keystone Steel, Peoria, Ill.; and Thomas D. Hopkins, Acting Deputy Administrator for Information and Regulatory Affairs, Office of Management and Budget 115

Joseph Sugarman, president, JS & A Group, Inc., Northbrook, Ill.; Edward Gross, president, Galesburg Sanitary District, Galesburg, Ill.; James W. Roodhouse, administrator, Institute of Physical Medicine and Rehabilitation, Peoria, Ill.; R. A. Ligon, administrator, Jackson County Nursing Home, Murphysboro, Ill.; and Janet C. Leeson, president, Leeson's Party Cakes, Inc., Tinley Park, Ill. 191

Mary Harkrader, group chair, Heart of Illinois Sierra Club, Peoria, Ill.; Donald A. Johnson, executive secretary, West Central Illinois Building & Construction Trades Council, Peoria, Ill.; and Jane Johnson, Citizens for the Preservation of Knox County, accompanied by Jan King. 230

ALPHABETICAL LIST OF WITNESSES

Bloom, Prescott E.:
- Testimony 21
- Prepared statement 50
- Responses to written questions submitted by Senator Percy 105

Brummett, Herman:
- Testimony 9
- Prepared statement 45

Burket, Richard E.:
- Testimony 115
- Prepared statement 161

Carey, Robert:
- Testimony 115
- Prepared statement, with attachment 151
- Response to written question submitted by Senator Percy 159

Carver, Richard: Testimony 4

Castle, John W.:
- Testimony 21
- Prepared statement 107

	Page
Cloyd, Richard:	
Testimony	115
Prepared statement	176
Gross, Edward: Testimony	191
Harkrader, Mary:	
Testimony	230
Prepared statement	236
Hoaglin, Dennis:	
Testimony	9
Prepared statement	34
Response to written question submitted by Senator Percy	42
Holling, Henry W.:	
Testimony	115
Prepared statement	133
Responses to written questions submitted by Senator Percy	148
Hopkins, Thomas D.:	
Testimony	115
Prepared statement	180
Johnson, Donald A.:	
Testimony	230
Letter to Senator Percy, June 23, 1981	243
Responses to written questions submitted by Senator Percy	246
Johnson, Jane:	
Testimony	230
Prepared statement	247
Leeson, Janet C.:	
Testimony	191
Prepared statement	228
Ligon, R. A.: Testimony	191
Perlman, Marty: Testimony	9
Ransburg, David P.:	
Testimony	9
Prepared statement	29
Roodhouse, James W.:	
Testimony	191
Prepared statement, with attachment	225
Sugarman, Joseph:	
Testimony	191
Prepared statement, with attachments	202
Wexler, Harvey J.:	
Testimony	115
Prepared statement, with attachments	169
Zinser, Richard C.:	
Testimony	9
Response to written question submitted by Senator Percy	44

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letters to Senator Percy from:	
Vice President George Bush, June 6, 1981	2
James C. Miller III, Executive Director, Presidential Task Force on Regulatory Relief, June 26, 1981	2
Statement of Bruce E. Anderson, representing Senator Charles H. Percy, Galesburg, Ill	253
Statement of John Bearce, president, John Bearce Ford, Inc	255
Statement of Beverley H. Johns, president, Illinois Council for Exceptional Children	257
Statement of R. A. Ligon, administrator, Illinois Nursing Home Administrators Association, Lincoln, Ill	263
Letter to Senator Percy from James B. O'Connor, president, Local 974, U.A.W., June 26, 1981	263
Letter to Senator Percy from Clifford T. Crestodina, executive assistant to the president, Fort Dearborn Lithograph Co., July 28, 1981	264
Letter to Senator Percy from Richard L. Moore, president, Timewell State Bank, Timewell, Ill., June 22, 1981	264

FEDERAL REGULATION

THURSDAY, JULY 2, 1981

U.S. SENATE,
SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION,
AND GOVERNMENT PROCESSES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Peoria, Ill.

The subcommittee met, pursuant to call, in the Peoria City Council Chamber, Peoria, Ill., Hon. Charles H. Percy (chairman of the subcommittee) presiding.

Present: Senator Percy.

Also present: William A. Strauss, chief counsel and staff director; Rob Portman, professional staff member; Galen Reser; Hal Smith; John Caldwell; and Jeanne Obcamp.

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. This is an official U.S. Senate hearing by the Subcommittee on Energy, Nuclear Proliferation, and Government Processes of the Governmental Affairs Committee. I have brought the subcommittee to Peoria to learn firsthand about the effects of Federal regulation on the people of Illinois.

We all know that regulation is expensive. Federal rules alone cost us over $100 billion per year and create an intolerable drag on productivity. Federal regulation is frustrating, time consuming, and annoying. Each year we spend 1.2 billion hours filling out thousands of Federal forms, applications, and questionnaires. Many times this paperwork is duplicative; seldom do we understand its purpose or significance. And, the burden of regulation usually falls unfairly on small business—the most competitive, dynamic, and innovative sector of our economy.

So what can we do? In the past, those faced with excessive regulatory burdens had nowhere to turn. Until this year. Now we have a golden opportunity to turn things around.

We have a President who is committed to regulatory reform. We also have a Congress that is acting to change our regulatory process for the better. The Paperwork Reduction and Regulatory Flexibility Acts of 1980, already enacted, will help reduce regulatory burdens, especially for small business. Very soon, I plan to introduce the Regulatory Reform Act of 1981, which proposes the "sunset" review and possible termination of all Federal regulatory programs. In addition, I have cosponsored Senator Laxalt's regulatory reform legislation that calls for cost-benefit analysis, judicial review, and reevaluation of rules already on the books. These are tough measures, but they are not yet law.

The best way to relieve unreasonable regulatory burdens is to talk with people being hurt by them the most. That is why I am here today—to listen and to learn. That is why I have held a similar hearing in Rockford this spring and in Quincy yesterday. These constitute the only Senate hearings held out of Washington on regulatory reform. In addition, I have asked Bill Strauss, the chief counsel of this subcommittee, to meet individually with dozens of Chicago businessmen who have raised concerns about Government regulations.

I want to stress the importance of this project. This is the only State in the country where hearings like these are being held, as I have said. The administration is very interested in what is being said here today because reduction in Federal expenditures, tax reductions and regulatory reforms are the three legs of the tripod on which rests the President's economic recovery program for the year 1981. I have received letters from Vice President George Bush and Mr. James Miller, executive director of the Vice President's task force on regulatory relief, expressing their interest in these hearings and their eagerness to receive our results. We will incorporate in the record those particular letters.

I would like to read a brief excerpt from Mr. Miller's letter. He testified in Rockford at our first hearing there on the automobile industry and the impact of regulation on the automobile industry, and I think in heading a task force under the Vice President he has the responsibility of carrying out the President's program. We're working cooperatively with him on regulatory reform. Mr. Miller says:

> The series of hearings and meetings that you are conducting throughout the State of Illinois will be extremely helpful to the administration's regulatory relief efforts affecting business, labor, and consumers in Illinois. We look forward to receiving the results of your subcommittee hearings, and also look forward to working with you to relieve the regulatory burdens identified by the people of Illinois.

[The letters referred to follow:]

THE VICE PRESIDENT,
Washington, June 6, 1981.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR CHUCK: Thank you for your recent letter and for your kind words in support of our efforts to reduce the regulatory burden.

Your input is always welcome and we look forward to receiving the results of the hearings which your Subcommittee is conducting. I have asked my able Counsel, Boyden Gray, to keep in touch with you. I have also noted your comment with regard to an Administration witness at your hearings and will check this out.

Again, thanks for writing. Hope to see you soon.

Sincerely,

GEORGE BUSH.

OFFICE OF THE VICE PRESIDENT,
Washington, June 26, 1981.

Hon. CHARLES H. PERCY,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: I would like to take this opportunity to thank you for your support of President Reagan's regulatory relief program. As you know regulatory relief is one of the cornerstones of the President's program for eco-

nomic recovery. Along with the other components—a stringent budget policy, an incentive tax policy, and a stable monetary policy—regulatory relief will help restore the health of our economy.

The series of hearings and meetings that you are conducting throughout the State of Illinois will be extremely helpful to the Administration's regulatory relief efforts by providing examples of specific regulatory burdens affecting business, labor and consumers in Illinois. As Vice President Bush mentioned in his letter to you of June 6, 1981, we look forward to receiving the results of your Subcommittee hearings, and also look forward to working with you to relieve the regulatory burdens identified by the people of Illinois.

In addition, I am very pleased that Tom Hopkins, my deputy in the Office of Information and Regulatory Affairs, will have an opportunity to testify at your hearing in Peoria on behalf of the Reagan Administration. If there is any other way we can assist you in this most worthwhile project, please let me know.

Again, thank you for your contributions to our regulatory relief efforts.

Sincerely yours,

JAMES C. MILLER III,
Executive Director, Presidential Task Force on Regulatory Relief.

Senator PERCY. Joining us today on behalf of President Reagan is Dr. Thomas Hopkins, deputy to Jim Miller at OMB. Is Dr. Hopkins in the room yet? OK. Fine. Dr. Hopkins has played a key role in the regulatory review process. Also, as a native of central Illinois, Dr. Hopkins has a special interest in hearing about your experiences with Federal regulations. He, too, is here to listen and learn and testify as well.

Following these hearings, I will submit a report of my findings and recommendations to the Vice President's task force and the Office of Management and Budget. The report will be based solely on the regulatory problems and concerns identified in these hearings.

In sum, what you say today will be heard and will make a difference.

Clearly, not all regulation is bad. That is why we will try to get a balanced perspective in this regulatory reform project, hearing as often as possible from environmental and labor groups, as well as business, Government and other organizations.

Should we have a feeling that regulatory reform means wiping aside all Federal regulation? After all, it's Federal regulations that brought about FDIC, the Federal Deposit Insurance Corporation. I know of no banker today who is proposing we change that one iota. Nor are we changing the Nuclear Regulatory Agency. Certainly when you build a nuclear plant, you want safety standards maintained, and you want some surveillance. What we're after is excessive, unnecessary regulations that are a contributing factor and a major one to our current economy. There are Federal bureaucrats in Washington telling us how many olives to put in a martini, where an airline can fly, whether we can show movies or not. Let the marketplace determine those factors. Let's emphasize safety in the air. Let's let the marketplace set services and prices.

Finally, excessive or unnecessary Federal regulations are but one contributor, albeit a major one, to our current economic doldrums. Skyrocketing interest and inflation rates, sagging productivity and investment, and depressed expectations are all villains contributing to our economic problems. The road to recovery will be slow and steady. But I believe the first signs or recovery are just around the corner. President Reagan's four-point economic restoration plan of tax cuts, spending reductions, stable monetary policy, and regulatory reform, given a fair chance to unfold, will provide just the antidote needed for

our ailing economy. I fully support the President's economic program and will work for its passage.

Today, we can help the President carry out a major part of his recovery plan by presenting him with a case study of the effects of Federal regulation on the economy of this great State.

It is with great pleasure we call our first witness and ask Mayor Carver to join us at the table, the Honorable Richard Carver. It has been a pleasure to work with you through the years. Your dynamic, innovative leadership has brought prosperity to the Peoria economy, not the adversary relationship that often exists between Government and business.

As a successful small businessman and an elected official, you can give us a unique perspective on Federal regulation. In a sense, your thoughts on this matter represent the views of the entire community. As a result, your testimony will be an important contribution to our effort to identify and eliminate unnecessary regulation. We look forward to what you have to say. Because all of your citizens, fellow citizens, are familiar with your record, I'll just put into the record at this point a summary of some of the outstanding accomplishments that you have made in your distinguished career.

TESTIMONY OF RICHARD CARVER, MAYOR, CITY OF PEORIA, ILL.

Mr. CARVER. Thank you very much. Although it's not in my testimony, I certainly want to congratulate you in your presence here and welcome you. We're very happy to have you here and participate in these very important hearings, and I am equally pleased to have the opportunity to testify today on the important issue of the impact of excessive regulation on the city of Peoria.

We have adapted so many of the detailed requirements related to our relationships with the Federal Government to the extent that they do not present the problem today that they once did. And I'm going to lay aside from my testimony, and what I'm going to do, Senator, is read some from my notes, and I think this is one particularly important issue, not as it relates to the city of Peoria, but as it relates to industries across the country, and that is this: That so often we are confronted with very substantial regulations and many of the programs with which we are involved, and the fact that we're able to adapt successfully so that we can handle some of the regulations with some degree of efficiency, and in no way suggest that we support their continued existence. I think that simply is a fine commentary of many of the working governments. Local government that is. Further, the simplification that has occurred as a result of the conversion to block grants of many of the federally funded programs has resulted in a reduction in the compliance requirements.

It is, however, safe to say that at least 10 percent of our administrative budget in CETA alone is spent in complying with the regulations related to that activity. There is little doubt but what we could be more effective with less dollars were we allowed substantially more flexibility and less detailed compliance. I would be most willing to provide an indepth analysis of this area if the Senator or his committee might desire.

Fortunately, the regulatory requirements of community development block grants, as well as general revenue sharing, are substantially

less and, as a result, allow these programs to be far more effective and considerably less costly in administrative overhead. General revenue sharing, in fact, should be pointed to as the prime example of not only how administrative costs can be reduced through reduced regulation and increased flexibility, but can equally be used as an excellent example of the ability of local government to produce positive results based on their own setting or priorities. Far too often, those at higher levels of government fail to recognize the capacity of local government which is, in fact, the principal level of providing service to our individual citizens.

I would strongly recommend that in the development of any new Federal programs, consultation with officials from local government should be a mandatory part of the final regulations at both the State and Federal level. This is important for the very same reasons that Congress has seen fit to add public participation to many of the regulations in the recent past. The fundamental question is who actually understands the delivery of virtually any urban program better than those who are elected to serve these urban areas.

In an entirely different area, we have seen our concern for the preservation and restoration of the environment totally obscure the fundamental issue of cost in relationship to benefit. As a result, the city of Peoria has found itself forced to comply with regulations of questionable value related to the combined sewer outfall problem that exists in ours and many other communities. Fortunately, there appears to be a realistic re-examination taking place at the State and national level which will, hopefully, cause these regulations to be substantially modified to include, among other things, careful attention to cost-benefit analysis. It is inconceivable that during this period of our recognizing as a nation the obvious issue of limited resources, we would continue to mandate certain environmental solutions regardless of their cost, particularly when so little is known of the nature of many of these problems. I will again refrain from detailing the specifics of the city of Peoria's difficulties, but would respond to specific questions.

Senator PERCY. Then if you could provide for the record as much as possible, Mr. Carver, and I will have a few questions for you, of course.

Mr. CARVER. I would be very happy. We're talking about a project that will cost approximately $45 million, that will require over $1 million a year in annual maintenance fees, and all of these for the most part will be borne by those in our community who are less able to do so again because of Federal regulation requiring that those who benefit must be participants in the cost of producing the sludge. It just so happens in an area that is a very old part of our city, the area that we are investigating, the greatest number, in fact, of all our community development dollars is the area that is involved throughout the fall project.

I think this is a strange paradox that the Federal Government which sends money to the city of Peoria for community development and trying to reverse urban blight. I would like to add, by the way, very successfully. I think we made great progress, but by the same token, to turn around and lay on the backs of these same individual citizens the cost of maintaining a very expensive, and in my opinion, very dubious

in terms of benefit as it relates to the elimination of the sewer outfall that comes as a result of major rainstorms where even at this point in time those in the State are unable to describe for us that there will, in fact, by any measurable benefit downstream in the Illinois River.

This, in my judgment, is an excellent example of the great pressure that caused some of the environmental legislation to be passed some 10 years ago, and now we find ourselves in the midst of having to pay for it and beginning to recognize as I know some others we have recognized that we can no longer justify some of those costs, and we ought to reexamine exactly what's occurring.

The regulatory process ought to involve, I would hope, particularly one. That is, the cost to local government, a participatory role for the local government. I serve on a commission that has written a great deal in the area of local involvement in many of the Federal regulatory process to say avoid some of the difficulties that we've been experiencing, and we could go through a long litany of regulatory problems, but still one that crosses my mind is CETA. I mentioned CETA because it's a major delay. I think, again, this is an indication of how local participation can effect—make the effectiveness of the delivery of services far better than they have been otherwise.

As a director of the State chamber of commerce, the owner of a small business, or as mayor of the city of Peoria, I could comment at great length concerning the impact on our economy of excessive regulation. I anticipate, however, that there will be others who will do so in some detail, and, as a result, I will limit my comments to essentially the public sector. It should, however, be recognized that the inhibiting influence of regulation on economic development ultimately negatively impacts on our local community. The loss of investment in new or expanded commercial enterprise clearly translates into a reduced tax base, reduced jobs, and ultimately reduced opportunity for the citizens of our city. Translate this not only to a national perspective, but an international one as well, and the impact on the individual citizen of excessive regulation in the private sector becomes very evident.

I would like to congratulate you on your decision to hold these hearings in order to obtain input from your constituents. I strongly urge you to see that these efforts are added to those which are currently ongoing at the Federal level, to assure the maximum positive result that can be obviously obtained by reductions, increased flexibility, and, in many instances, the elimination of regulations that are constantly being developed by the Federal regulatory process. And I will be happy to respond to any questions you might have.

Senator PERCY. Thank you very much. You were at the chamber of commerce breakfast with me this morning when I was asked a question by a member of the chamber if I could name some of the Federal regulations that I felt needless, unnecessary, duplicative, or too costly to be cost effective, and I named four or five. I wonder if you could put in for the record examples of either new, or for the record, examples of regulations that you have seen that are imposed upon the community of Peoria that you feel are not cost effective that complicate the day-to-day functions, or hinder your ability to provide worthwhile programs and services to the city of Peoria at the lowest possible cost?

Mr. CARVER. Well, Senator, I have already mentioned, of course, the commission, and I might add this is a tremendous regulatory process related to the CETA program. This is a program to put people back to work and Peoria has been quite successful in that area. Our efforts are not designed to keep a lot of personnel working and filling out forms and putting in numbers to make sure that someone in Chicago has a detailed day-by-day record of what's happening in Peoria, but rather to see that those dollars are helping to get people jobs.

We are spending, and I've already indicated so in my teestimony, tens of thousands of dollars. Literally 10 percent of our administrative cost is what we think are excessive regulatory costs. We believe, frankly, that quarterly, or sometimes even annually, would be more than sufficient to have an overseeing of our activities and at the same time eliminate excessive cost. This has been true to a much lesser extent than some of the other Federal programs. But the constant desire to discover almost on a daily basis how we are spending Federal funds has, in fact, created tremendous additional cost as compared to general revenue sharing, which has very minimal requirements in terms of compliance and yet the record would show you, in fact, 10 years if it's been an expense because of noncompliance with the Federal regulatory process.

As you yourself have stated and I would reinforce, the marketplace can take care of so many of these things. Local government has a responsibility to make sound decisions. Unemployment compensation, I might add, was not a part of the cost to the city of Peoria. We have had virtually no layoffs up until this spring, and then almost none, and then today unemployment compensation has been expanded at the will of the Federal Government to include local government and added to the local real estate taxpayer an additional cost that we think was unwarranted under the circumstances.

And in each instance what I would try to point out, I guess, is that compliance with regulations which is a lesson in what we have to do—filling out substantial number of forms to make sure we are complying with Federal programs are very costly and could be reduced simply by reducing them to annual audits or in some instances even making them part of our normal audit where our auditor can simply certify as to how the funds were spent. Beyond that, Senator, unless we want to talk about what people have said under the OSHA report and a few other things, I would leave it alone.

Senator PERCY. Thank you very much. One last question. Because of Federal budget cuts, the next few years are going to be difficult for mayors and Governors. In many cases, you will be the ones who must decide which programs have to be cut and by how much. The more efficiently you can run these programs, the smaller these cuts will have to be. If the Federal Government, through the Vice President's task force, were to get serious about regulatory reform, I think this could be of great help to you. Do you agree with me, and do you have suggestions about how we in Washington can work more closely with mayors in this Nation to accomplish this?

Mr. CARVER. I think those in Washington, including your own office, have been working closely with the mayors. Almost 4 months ago now, within 2 weeks of President Reagan's inauguration I, and I

think six other mayors met with the Vice President and also the President to discuss their efforts in the regulatory process and ongoing consultation with mayors is an important component making sure that what comes out at the bottom end will work. This hearing is evidence that Members of the Senate, such as yourself are interested in finding out just exactly what will work, but I would simply reemphasize that continued consultation with the mayors of this country I think will be of great help when it comes time to implement those programs. Because, as I mentioned in my testimony, the mayors of this country, the city governments of this country, will be the ones held accountable by the local citizens for the quality of service.

If you reduce spending in the area of health care, and in the area of manpower, those people without jobs and those people who can't find transportation, public transportation, as well as those people that have difficulty with public housing, they will not be showing up in the Dirksen Office Building or the White House. They will be showing up in city halls. So, as a result, I commend you and the President and the Vice President for making sure that mayors have been involved and would simply encourage continued involvement.

If those folks come into our city hall buildings, we want to give them explanations that may not suggest that there is going to be fresh money because we know there will not be. But at least we were a part of the process, and as a result, we can explain and we'll attempt to deal with the difficulties that come as a result of reduced Federal expenditures just as we'll benefit from the government of our economy that will also come with reduced Federal expenditures and reduced regulations.

Senator PERCY. Mayor Carver, I thank you very much indeed, for your very helpful testimony, and we're pleased to have you with us today.

We're going to spend the next few minutes with our next panel of witnesses, Mr. David Ransburg, Mr. Dennis Hoaglin, Mr. Richard Zinser, Mr. Marty Perlman, and Mr. Herman Brummet. Our first witness today is David Ransburg who was in Washington recently, accompanied by a number of Illinois small business representatives. We need to discuss the issues right now, so we just brought the hearing out here, David, because of you and because of that hectic day. We're delighted to have you here, and I welcome all of you as representatives of business communities in Peoria and the State of Illinois. Your testimony will be helpful in our efforts to cut Federal regulation and redtape. You really came out of the trenches; you're in the front line; you're at the receiving end of Federal regulation. That's where you come in. You can talk about our Government, you can criticize it, and I guarantee you there will never be recriminations against you.

In fact, regulation will be more responsive because of you. There aren't too many countries left in the world where you can come in and criticize the government that particularly adversely affects your business and have the freedom to do so and your rights. So the legislative branch and the executive branch stand behind you and your right to come in and critically and constructively point out what you think ought to be done to improve the relationship between Government and business. Your voices without any question will be heard in Washington.

Mr. Ransburg, we're pleased to have you as our first witness from the business community today. You have been very helpful to my staff in the planning stages of these hearings, and I sincerely hope you will find it as useful as I know I will. As president of the Independent Business Association of Illinois, I know that you speak for hundreds of small businessmen throughout the State, and we look forward to hearing what you have to say.

TESTIMONY OF DAVID P. RANSBURG, PRESIDENT, L. R. NELSON CORP., PEORIA, ILL.; DENNIS HOAGLIN, PERSONNEL DIRECTOR, GRIGOLEIT CO., DECATUR, ILL.; RICHARD C. ZINSER, SENIOR VICE PRESIDENT, FIRST FEDERAL SAVINGS OF PEORIA, PEORIA, ILL.; MARTY PERLMAN, PERLMAN CARPET CO., PEKIN, ILL.; AND HERMAN BRUMMETT, APOLLO OIL CO., PEORIA, ILL.

Mr. RANSBURG. Thank you, Senator. I would like to join Mayor Carver and others in welcoming you to Peoria and appreciate your taking the time to listen. I think too many of us who have to live under the laws and regulations that are passed have too little opportunity to provide some feedback, and I hope that something meaningful will come of this hearing.

First of all, I am a small manufacturer, and I am here today to tell you a little bit about how I feel the recent avalanche of taxes have affected not only my business but other business in the United States. This recent avalanche of legislation, regulation, an taxation has made it very difficult for us to acquire capital and qualified people, which we need to survive.

Many of us in the small business sector feel that we as a Nation face an uncertain economic future as a result of well-intentioned, but often poorly implemented legislation and regulation. Historically, as you know, as a former participant in the private sector, we've been an innovative and productive people. We've had a history where ideas and hard work have steadily increased our standard of living.

However, as a result of recent Government action, these innovative and productive people are becoming a confused and endangered species. In fact, I believe that Government in many cases has promised a large number of people that it can provide them a risk-free life in which they are totally protected and in which nothing can go wrong whether they are responsible and productive or not.

Unfortunately, I believe that this is a promise which no government can deliver because the productive people will not continue forever to contribute their work product to such an unfair system of distribution.

Our Government should create an environment in which people are more responsible for their own actions, an environment in which saving, investment, and productivity are rewarded, not penalized. Government should create an environment, not using the tax system to transfer investment dollars into nonproductive Government programs.

I have attached a summary which is not very sophisticated since I was too busy running a business to try to give you totally accurate information, but I estimate that the costs we can identify associated with Government regulation amounts to 4 or 5 percent of our sales dol-

lar and that does not include costs of labor or material, so that we can identify a substantial increase in our cost just as a result of regulations that we can identify. I would say that the major problems facing small business today are inflation, lack of capital, excessive regulation, and the resulting loss of productivity as a result of those three problems. And I won't bore you with all of the details. They are in the record, but I can give you an example of one or two, and then in the question and answer session I would be glad to give you other samples.

We had a complaint from the local sanitary district, which is the same thing Mayor Carver was pursuing, where there was apparently an unclear rule between the EPA and our sanitary district, and they were concerned about an effluent that we were putting into the local sewer system. The amount we were putting out was about 10 gallons per minute. It had a very few parts per million of brass because that's what we make, brass couplings, and they were concerned about the fact that they had to be able to have effluent coming from our plant that was as clean as the effluent coming from the sanitary district because in the event the sanitary district was closed down, the storm sewers would bypass it into the river.

So they suggested that we get a consultant, who came in, did a study, and asked that we spend $70,000 on equipment and $50,000 a year on supplies to solve this problem. We resisted a lot of heated discussion back and forth, and finally one of our clever Rube Goldbergs, who runs our equipment, came up with a very clever way to bubble this solution through some crushed limestone, which costs $6 a ton, and run it through a filter and put a pH filter on it, but we never got firm approval. We saved ourselves $70,000 and $50,000 a year, and that's the kind of thing that troubles us, because we're saying it doesn't make much sense to us as practical, practicing people day to day who are making financial economic tradeoffs, we don't quite understand how some of these laws or rules get passed.

Now, in order to deal specifically with the problems of excessive regulation, it seems to me we first need to identify the problem. I see the problem as follows: First of all, I believe there is no clear national regulatory policy or purpose against which all regulations could be evaluated. There is no apparent coordination between regulatory agencies. This often results in conflicting or confusing regulations. There is no well-defined way to make cost-benefit tradeoffs. This often results in overzealous regulators showing their bias toward total risk-avoidance or results in attempts to totally eliminate a problem with little or no regard for the cost-benefit relationship.

There is often inadequate input from those who will be most affected by the regulations or who have the practical knowledge to predict how new regulations will work in practice and what they might cost. Regulations are excessively complicated and are not written in easily understood language. Finally, there is no readily available way to regulate the regulator except through the judicial process, which is extremely slow and expensive and often beyond the resources of small business.

To address these problems, I would offer the following recommendation. I would develop a regulatory policy statement, against which all regulations should be evaluated, develop a simple regulatory cost-benefit system to make sure that the cost of proposed regulations is

justified by the estimated benefit, conduct followup audits after implementation of regulations to insure that the cost-benefit objectives have been met. This might fit in very well with your sunset proposals. Establish a Regulatory Review Commission responsible for the approval of all regulations, develop a responsive issuance and review procedure outside of the judicial system. And, finally, dramatically reduce the paperwork burden through innovative management. For example, you might require all agencies to pay a market-rate for any information they require from business and require that the agency pay for such information as a line item in their budget. Such a procedure would establish a balance between the value to the agency and would establish a price at which the person completing the form was willing to take the time to do so. This would eliminate the hidden tax which is implicit in unnecessary paperwork which presently costs the economy billions of dollars and which many people acknowledge as never used by the agency requiring submission.

I believe that it is important that Congress and the President face our present economic crisis with real political courage and that you attempt to make some tough, long-term decisions that will affect our country for generations to come. I believe too many of the decisions made in the recent past have been influenced by short-term political expediency and the motivation to remain in public office rather than to do what is best long term for the creativity and productivity of the people of our country.

I appreciate your allowing me to testify today and hope that my comments will be of value to you as you make proposals to the Senate and to Vice President Bush's task force on regulatory reform, and I'd be glad to answer any questions which you might have.

Senator PERCY. Thank you very much, Mr. Ransburg.

Because we have so many standing, perhaps the staff could help just guide people around. As long as there are empty chairs anyplace, let's fill those chairs. There is one over here and a couple over there. We may have to evict you if the panel gets larger, but let's have as many people seated as possible.

I have, by the way asked—and all of the testimony will be put into the record—we have asked our witnesses to try, so that we can maximize the time for questions, to summarize their comments in 5 minutes. And if we adhere to that schedule, we'll get through the morning without skipping any of the panelists.

Our next witness, Mr. Hoaglin, is in the metal finishing business, and we selected him because he's had a great deal of difficulty with one particular regulatory agency, OSHA, in recent years. Now, at one time, I know that OSHA was considered the worst regulatory agency in the country, and it probably had more vindictives directed toward it than any other agency.

In a bipartisan spirit I want to say that the Carter administration recognized this. The Carter administration tried to improve its performance, tried to get away from nit-picking regulations that made no sense whatsoever. And, Mr. Hoaglin, if you would be good enough to comment on not only the adverse side, but also whether you've seen any improvement in recent years in OSHA performance. Thank you.

Mr. HOAGLIN. Thank you, Mr. Percy, and thank you for the opportunity to address you today. I appreciate your comments about the recent history of OSHA.

It is our feeling, Mr. Percy, that probably the problems with OSHA cannot be solved with more funding or more staff as the problems derive from the basic philosophy by which OSHA operates. I think that's what I tried to emphasize in my statement.

As you noted, we are a small manufacturer, and, of course, we do spend considerable time doing government paperwork, but that burden of paperwork and time becomes especially more acute when a company gets involved in an adverse proceeding with a regulatory agency. And that's what happened to us in 1979 when we were the subject of an OSHA inspection. The inspection resulted from an employee complaint that was received at the Peoria area office, and under the authority of a warrant, which we felt was defective, the inspection ensued in May 1979.

As a result of the inspection, there was a citation alleging excessive noise exposure, and because we felt that inspection was faulty in several aspects we made a decision to contest that citation. the abatement requirements and the penalty that was imposed. We felt our defense was very strong, and we felt that OSHA had a very weak case.

And probably one of the major points I'd like to make today is we felt then that they should have dropped that action as soon as it became apparent that their case was weak and that ours was so strong. The case—our defense gets fairly technical, and I'll not get into the technicalities of noise monitoring, but briefly the five points of our defense were this. No. 1, the wrong portion of the noise standard was applied. The noise, which was measured in our factory, was classically exemplar impluse type noise, and OSHA instead chose to use a technique suitable for continuous or intermittent noise. Two, they used the wrong type equipment, again, suitable for continuous or intermittent noise, and, three, one of their dosimeter readings was very discrepant and read 3,561 percent of allowable exposure. We thought that cast some serious doubt on the other two readings, one of which served as a primary basis for the citation. Four, the compliance officer did not calibrate his equipment on the inspection site, and there was some evidence that he could have possibly have doctored the preinspection calibration record.

The fifth point of our defense was that the OSHA Hygiene Field Operations Manual in effect at the time of the inspection required a minimum of 10 backup sound level meter readings in support of their dosimeter findings before a citation could ensue. And only four such readings were taken.

From the very beginning of our encounter with OSHA we have made these affirmative defenses, and OSHA's response was that these defenses were frivolous, lacking in foundation, substantiation, and sponsorship. It took 8 long months for us to finally convince them our defense was not lacking in foundation, substantiation, or sponsorship.

Part of the action against us was the filing of 28 pages of cumbersome and oppressive interrogatories, which I have here, and I have noted in my statement that part of these interrogatories would have

actually required us to have a time study or job analyst present for each and every one of our factory employees for each and every workday for 1 year.

I'd like to read just a short excerpt from these interrogatories. This is subpart B of one of the interrogatories. It asked the average period of time during the workday that each employee listed in the answer to interrogatory No. 5A is present in the immediate work areas given in answer to interrogatory No. 5C. And, E, the period of time each employee listed in the answer to interrogatory No. 5A is outside of the work area described in the answer to interrogatory No. 5C and indicate the reasons or purposes for which the employee is outside said work area. F, the period of time each employee listed in answer to interrogatory No. 5A was present in the immediate work area given in answer to interrogatory No. 5C each day from May 1, 1978, to May 1, 1979.

I recall when I got these things in the mail, my chin hit my desk practically. There was no way that a company of our size with the limited staff that we've got could handle these. It was clear to me that OSHA was trying to get us into submission and to get this case off their books before it would result in some precedent value for the metal stamping industry, and we didn't give up. We had the wherewithal and fortunately we were financially able to keep up the defense, and it was not until about 2 weeks before the scheduled hearing on the matter that OSHA finally withdrew for lack of evidence.

Now, we've done some estimation of the cost of our defense. We don't have complete records, or a complete accounting of the expense, but I don't think it would be unreasonable to estimate the direct dollar cost at about $30,000. And, if you were to assume an average manufacturing after-tax profit margin of 4 percent, that would mean it required generation of $750,000 in sales just to recoup that direct dollar cost. We manufacture appliance parts, and especially knobs and decorative trim. In order to generate that $750,000 in sales, Mr. Chairman, we would have to manufacture 5,597,000 or more of these microwave oven knobs. That would be enough to outfit a bunch of microwave ovens I can tell you that. How about 1,119,402 ovens.

Senator PERCY. About.

Mr. HOAGLIN. Approximately; yes. Give or take a couple. And what are the opportunity costs—the time that I could have spent on productive pursuits and perhaps some safety project that would have had some benefit for our employees? It left us embittered toward the regulatory process. We felt that it was wasteful, it was counterproductive, and it was a high-handed misdirection of our valuable resources.

We don't feel that Congress could have envisioned the vesting of this much power in the hands of nonelected officials. We feel that this malignancy in the regulatory process has resulted in a fourth and unintended branch of the Government which makes and enforces rules and regulations with discrete power of law and against which we businessmen and other citizens have little remedy.

I urge your support for Executive Order 12291, I believe it is, and I think that will be a step in the right direction. But the important point I'm trying to make is the philosophy of OSHA must change. We don't change that with more funding or more staff. I'm not sure what

it will take, but it's got to change. We feel one recommendation that we could make is that OSHA could respond to violations with advice and conciliation.

When we received our citation, there was absolutely no advice whatsoever as to what steps could be taken in the form of abatement. That would have helped. And we feel that enforcement must be concentrated where serious injuries are most frequent. We feel that small businesses, and those with good safety records like our own, should be exempt from routine inspections, and we feel that OSHA would find the majority of businessmen quite favorable to cooperating and finding real and practical solutions to real safety problems.

And, finally, we feel that the legislators must stop abdication of their powers to regulators, that regulators must remain as creatures and not creators of the law. That concludes my remarks, Mr. Chairman, and I'll be happy to answer any questions.

Senator PERCY. Thank you, Mr. Hoaglin, very much indeed.

The Chair would like to recognize the presence of John Castle, who is sitting at the end of the table, director of the Illinois Department of Commerce and Community Affairs, and a very valuable member of Governor Thompson's cabinet. I know that John Castle must return to Springfield, but we're going to wait, if it's all right with your schedule, until Senator Bloom arrives, and then we will put you on so that you can both return to Springfield afterward. Thank you.

Our next witness is a representative of one of the most depressed industries in Illinois and in the United States today. It's certainly in greater difficulty than in any time in my 14½ years in the Congress. Mr. Zinser will testify, on behalf of the Savings & Loan League of Greater Peoria. With interest rates so high, with the home mortgage business so sluggish, we've had difficult times for the savings and loan businesses in Illinois. Once interest costs come down and savings move up, as I fully expect they will over time, we'll see better days. But meanwhile we've got some problems, and I think that Mr. Zinser's testimony on how Government regulation adversely affects this industry at a particularly difficult time in its history will be very much of interest to us all.

Mr. ZINSER. Thank you. I am Richard C. Zinser, senior vice president of First Federal Savings & Loan Association in Peoria. I am currently serving as president of the Savings & Loan League of Greater Peoria.

I thank you, Senator, for the opportunity to make these statements. I will address certain rules and regulations pertaining to home mortgage loans.

The Home Mortgage Disclosure Act of 1975 requires lenders to prepare annual reports detailing the locations, by census tracts, wherein home loans were made during the year. This report is then to be made available to the public in order to bring to light any geographic areas that are redlined, or designated internally as areas in which lenders will not lend.

Our association has produced this three page report every year for the past 5 years. During those 5 years, one social service agency has requested the data each year, one citizen asked for five copies, and one media reporter asked for two copies. To the best of my knowledge, that is the total exposure of that report. Its availability is advertised, and

we have had a special mailing to local community groups noting the availability of such data.

Our data processing system produces the raw annual information which is then typed and made ready for the public. A rough estimate of production costs would be $400 per year for this association to produce this report. Extending that cost for 5 years and noting that only three people have requested such reports, the public is being informed at a dramatically high per capita cost. If 15,000 mortgage lenders across the country—estimated for these remarks to be 3,000 savings and loan associations and 12,000 banks—had similar costs, some $30,000 nationwide has been spent for a seemingly nonproductive report.

I am in favor of exposing any lending institution that discriminates against residential borrowers based on home location, but the current Home Mortgage Disclosure Act is questionable in achieving the purpose for which the act was created.

May I also address the positive side of certain Federal regulations pertaining to the savings and loan industry? Ours is a specialized business, federally chartered, to "Provide for the sound and economical financing of homes." The savings and loan associations across the United States have lived up to that directive over the years and have been the major suppliers of home mortgage loans, thus satisfying the American dream of homeownership. The members of today's Federal Home Loan Bank Board, our regulator, are doing an excellent job of working with our industry, not against it, to help us live up to our chartered responsibilities.

Many Federal regulations have been established to encourage public investment in our savings accounts and certificates, thus assuring available funds at affordable rates for home financing. The recently formed Depository Institutions Deregulation Committee, however, has proceeded to dismantle many of the regulations which protected, not the savings and loan associations, but the desire of the people, through regulation, to have affordable money available for home loans. This rapid deregulation has had the effect of eliminating the home loan specialist aspect of the savings and loan industry.

As recently as last Thursday, June 25, 1981, the Depository Institutions Deregulation Committee proposed increasing the rate paid by savings and loan associations on passbook savings accounts from 5½ percent to 10½ percent as part of the deregulation process. This move, if approved, would cost our association well in excess of $3½ million per year just to maintain dollars already on deposit in such accounts. Giving a higher rate to passbook savers is a positive move, but savings and loan associations would be able today to earn additional income in order to pay that higher rate only from investments, not home loans originated in the associations normal lending communities.

I am not afraid of a new world in which a savings and loan association looks and acts exactly like a bank. Our association, like most across the country, is prepared to perform the role of a consumer bank, and I feel we will perform well. But I pose this question: Is today's American dream the opportunity for all citizens to be able to earn the highest rate of return on available investable funds? Today's financial regulations, and deregulation directions, certainly emphasize that dream, witness the $120 billion residing in money market mutual

funds. If that is the focus of the American people, as exhibited by the laws and regulations effected by Congress, the association for which I work and the industry of which I am a part will serve the consumer and his financial requirements with skill and enthusiasm, but not with emphasis on home loans due to these shifts in regulations. Have we abandoned that cherished American dream of homeownership?

May I very respectfully recommend, Senator, that regulations be examined not only for cost and burden, but also for purpose. Spending $2,000 locally, or maybe $30 million nationally, to notify the public that our association is an area-wide lender, is too much cost and burden to satisfy the purpose. However, stripping away or altering the regulations that made the savings and loan industry the Nation's best home loan source is a questionable course of action. To reflect your earlier statements, Senator, and to quote a very old saying, if the regulations ain't broke, don't fix them. Thank you very much.

Senator PERCY. Thank you for a very concise statement. Right on the dot—5 minutes.

Mr. Perlman, I understand you do have a brief statement about the grant process of the U.S. Department of Housing and Urban Development. We have not heard many comments about HUD regulations and would be most interested in your views.

Mr. PERLMAN. Thank you, Senator Percy, and thank you for the privilege of appearing before you. My name is Marty Perlman and I am the owner of Perlman Carpet Co., at 1106 Derby Street in Pekin, Ill., and the problem is not in the carpet business but partially because of the lack of home building and home construction.

My main concern at this time and my reason for testifying at your hearings today is the practice of the Federal Government through the Department of Housing and Urban Development of constructing living facilities in communities without considering the community or its needs. In particular, I will refer to a project pending approval in Pekin, Ill., because I am most familiar with that development.

At the outset, be assured that in no way would I be part or parcel of any movement or situation which would deprive adequate living facilities for the poor, elderly, or anyone else in real need.

The plan is to construct 50 duplexes and a 210-unit high-rise complex in Pekin that will be federally subsidized. I don't believe that a feasibility study or a market survey was made to determine the real need for 260 more subsidized units as they were proposed for the downtown and outlying area of Pekin, Ill. At present there are so many vacant apartments and small houses now that there really wouldn't be a need to wait until these are constructed if the need for this housing is so imminent.

I would like to comment on Mayor Carver's remarks about urban blight. I took an area that wasn't producing 600 dollars' worth of tax revenue, and I put an eight-unit apartment complex on there, a very, very fine unit of 900 square feet. The taxes that were paid in 1980, 1979 taxes paid in 1980, produced $3,387. I don't know what they're going to cost this year yet.

I would propose that this project be held in abeyance until a survey be made to determine a real need, and if this is found to justify more subsidized housing, that they take existing qualified units rather than

build more, and make the needy wait 2 more years to get in needed housing. I am sure the banks and savings and loans would appreciate these facilities taken off their hands—as I am certain that if the Government builds more than the market can support, the banks and savings and loans holding the mortgages on these facilities are going to wind up getting them back, and I don't know what they're going to do with them. They probably couldn't give them away if they had to.

I'm sure that if President Reagan is sincere about his budget cuts and all Republican Senators and Congressmen fully back the President in his effort to stabilize this economy, they should look into this type of project because our economy can ill afford this willy-nilly expenditure of millions of dollars without a real justification for it.

My next concern has to do with the awarding of the bid for the construction of this particular Pekin project.

HUD has recommended that the award go to Thomas Construction whose bid was $2,596,800, that's approximately $73 to $74 a square foot for construction, and I know that last year all of FHA and HUD projects didn't cost between $42 and $43 a square foot. Nevertheless, this cost is $604,600 higher than the lowest bid. This is a sorry waste of too much of the taxpayers' money, and I can see no sense awarding this project to the highest bidder under any conditions.

Another point I would like to make, the Tri-County Regional Planning Commission has heard evidence and testimony on both sides of the fence. They, on a vote of 16 to 2, recommended to the Housing and Urban Development authorities in Chicago that this project be disapproved. I appeared at a meeting in the HUD office in Chicago, Ill., one over on Dearborn Street on June 16, and I was privileged to be heard there. We had an interesting and great meeting, but in my opinion it looks to me like regardless of what went on in this community, HUD is going to ramrod this thing down our throats. I would like to see you look into this matter thoroughly, hold the situation in abeyance until a real survey on market study to determine its needs are made, and then come to a decision because it's needed rather than the fact that we have these excess millions of dollars HUD funds, and we're going to put them someplace whether you like it or not.

Thank you very, very much, Senator, for hearing me out on this matter, but you know these people are business people, and they have to generate the tax revenues that support these activities, and it's very, very difficult when you're working on a minor percentage of money to pay excess funds for willy-nilly use of these moneys. I realize we need housing, and I'm all for it if we really need it, but I really feel it should be looked into very, very thoroughly, and thank you very, very much for hearing me.

Senator PERCY. Thank you, Mr. Perlman.

Mr. Brummet, you'll be our last witness on this panel. You run Apollo Oil Co. right here in Peoria, and as a petroleum and alcohol fuels distributor in Pekin, your work covers two issues that are of particular concern to me. Certainly alcohol fuels, because I wanted Illinois to become the Saudi Arabia of alcohol fuels. We have the largest manufacturer in the country—Archer-Daniels-Midland, and they will be testifying this morning. And I know that you have an interest as an independent petroleum producer in the legislation that I've introduced concerning Government regulation for petroleum

products. I wanted to deregulate the market for these products while providing nonregulatory means for insuring companies like your own will always have access to the oil that you need in business. So we're delighted to have your testimony this morning.

Mr. BRUMMET. Thank you very much, Senator Percy. I basically am not prepared to talk in terms of alcohol. However, since you mentioned it, that is one of my first loves. I was a pioneer in this area for alcohol, and it is a very important part of my business. In fact, today I don't know just exactly how I rank, but I figured that we use 11,000 bushels of corn a month at our stations. It amounts to approximately a third of my total business, and I'm very proud of the assistance that we have had from both the Federal and the State government on it.

Senator Percy, as I said, my name is Herman Brummet. I have the Apollo Oil Co. here in Peoria, and I am also a member of the Illinois Petroleum Marketers Association which I am representing here today. Excessive Government regulations just don't play in Peoria.

Briefly, the Illinois Petroleum Marketers Association is comprised of some 900 members who are small businessmen operating as marketers and jobbers of petroleum products in every county in the State of Illinois, and to my knowledge not a single one has any OPEC affiliations. Our members are vitally interested in what affects the petroleum industry and that is why I am here today.

Our association for the past several years has had to concentrate its efforts on trying to decipher and provide information to the membership regarding various regulations published by governmental agencies. Thank God, President Reagan decontrolled petroleum products on January 28, 1981. This lifted a heavy burden off the backs of petroleum marketers throughout the Nation. Even DOE has publically stated that the regulations were too complicated to administer. As an example, I was audited there when I first went into business, and I was doing only 40,000 gallons a month. They interpret the rules one way. I interpret them another. They came to the conclusion under their way I had overcharged my customers $1,400. They put this in the newspaper that Apollo Oil Co. had overcharged the customers $1,400, and you can imagine what kind of reception that got.

As I said, well, what in the world can you do because in Peoria $1,400 doesn't buy many lawyers to defend you on something like that. So he said you drop your price a penny. I dropped my price a penny as he suggested it, and my competitors, being the highly competitive business that this is, dropped theirs 3 cents, and so that was the story of our thing, and 6 weeks later he comes back to me and says, well, what did you do about my suggestion to you? It was really an order. He said they did check that out, and they found that you really didn't overcharge on that, and I was afraid that you had already given it back.

I said, well, what in the hell do we do now? He said, it's already around $400, though. I said, well, that's $1,000, how about you writing me a check? He says, no, it doesn't work that way, Mr. Brummet. I said, well, you told me to reduce my price a penny. I lost $1,000. How am I going to get it back? Awe, he says, we have the answer to that. You raise your price a penny over the saving there, and then you can get that $1,000 back. I said, now, wait a minute. My competition is already down 3 cents, so you want me to raise my price 4 cents and

get it back? I said it won't work, will it? I said, OK, how about you putting a news release out and you put this news release out that I didn't really overcharge my customers like that? He says, oh, we've got enough problems without that. He says goodness, don't ask that. Well, this is the last time I've seen him there, and I guess that was probably a pretty good investment.

From 1973 to 1981, though, a majority of your time has been spent on interpreting allocations and pricing regulations. They didn't play in Peoria, and thank God, with your help and the help of President Reagan, they have been eliminated.

Although we have been deregulated, the Department of Energy, the Environmental Protection Agency, and the Department of Transportation have continued to come forth with rules and regulations that have a vital effect on our business.

I'm looking through some of the notes to get into this 5-minute regulation. They have come up with some decals, some more decals——

Senator PERCY. A suggestion?

Mr. BRUMMET. And to put on the transports that haul, and then of course they have a decal, one for gasoline, one for fuel oil, one for diesel fuel, gasohol, and so forth. Well, they have come up with a very fine compromise on this, and then you can just have one decal now on the transport. And I know that you're going to sleep better tonight knowing that a truck with No. 1203 on it is carrying gasoline or fuel oil and just thinking how lucky we are that one compartment, and which most of the transports have four compartments, they don't have to have four numbers that you would have to remember what that truck was going to carry.

The DOE continues to harass our members about the energy audits that the head of the department couldn't figure out and interpret. Even though the regulations have been dropped in many instances our members were audited 4 or 5 years earlier, and at that time our auditors told our members to set up their books in a certain fashion and today the auditors are saying that that way was wrong, and it should have been set up in another way. Our members are susceptible to fines which amount to several thousand dollars.

In that regard, the Department of Transportation is one that has recently been causing us a lot of trouble in that they have had some unenforceable and obtainable insurance requirements. A little tank wagon that is very important in this area here to handle small agriculture accounts, maybe this is a little truck that holds 1,500 to 2,500 gallons, they want them to have $1 million coverage on liability insurance, but the important part of the audit was this: That they wanted to have it with one company. I don't know how to buy insurance that way. Generally your public liability and property damage insurance is up to $300,000 to $400,000 limits, and then you have an umbrella, but this wasn't satisfactory as far as the Department of Transportation, and I think through some consultation with the Department of Transportation they have made some changes that would make it a little bit more acceptable to us.

In the Peoria area where we have always been blessed with several terminals—this is a water terminal tap. I find that the following terminals have been closed, and this is very important as part of a distribution system for gasoline. The Mobil terminal now only handles fuel oil;

Clark Oil Co. and Martin Oil Co. only handle fuel oil; the Texaco terminal was sold completely and several months ago the J. D. Street terminal was closed in Havana. I am sure that this has happened not only in the Peoria area but throughout the country. The stringent EPA rules and the cost of equipment to comply has made these older terminals unprofitable to operate today. Five terminals closed in just this area. Five businesses closed up all or in part in this particular area because of EPA regulations.

Business economics would not allow the $250,000 to $500,000 investment to capture a few gallons of vapor under the Clean Air Act. Where our country is 40 to 50 percent dependent on foreign crude we need all the storage area that we can get. When the river freezes over here, we have trouble getting products and sometimes have to drive a truck down to St. Louis or Champaign in order to get a product because the product is not stored in here just to get us over a freeze, and you can see what happens there if we have an OPEC. We need that storage, and yet the EPA is closing these places down because they cannot come up to their stringent regulations.

Let's talk about these fumes and what it is costing. Some people say it stinks as far as the fumes that come out of that car. I say it's Chanel No. 5. The service stations in my particular case has spent about $10,000, I've spent about $10,000, and each truck has spent about $10,000, and the terminal $250,000 to $500,000. This is what it has cost in order to eliminate the fumes in this particular area.

Senator, I appreciate the opportunity of making some of these points in my testimony, and I have a few other very interesting things here. I didn't even get to show my fuel deal here. And we buy a clip, have to take it off, because we have to make our customers hold that up there. They won't let us put that clip on it. The fire marshal says its OK. But OSHA says, no, no, you take that clip off. We want your customers to stand there and hold that.

Mr. BLOOM. Tell them how to get around it.

Mr. BRUMMET. I haven't figured it out, Pres.

Mr. BLOOM. Put your gas cap in there.

Mr. BRUMMET. Oh, yes. That's right. The customers put a gas cap in here, and so the customers take care of it. However, they think that I'm too tight to buy them this clip, though. They don't blame it on you. They blame it on me. They think I'm too tight. But I buy the clip, I pay for having it taken out, removed, and so then they can put a gas cap under here [indicating]. Well, these are the crosses we have to bear. It's a good business. We like it, and we hope that you're successful in eliminating some of the regulations. Thank you.

Senator PERCY. Thank you very much, Mr. Brummet.

I'm going to ask, because our State representatives and officers have a plane waiting to fly them right back to Springfield. and they made a special trip up here, I wonder, Mr. Zinser, could you yield your spot to Mr. Bloom so he could testify and have a microphone available? There is no mike down there at that end of the table. And Mr. Castle, if you would change places with Mr. Hoaglin. If the panel could just stay right here at the table, we will ask questions of you in just a moment. But we will get our State officials underway right away so they can maintain their schedules.

Senator Bloom, you're looking mighty wide awake for having been in session until 4 a.m. this morning.

Mr. BLOOM. Mr. Chairman, I think you'll find that the Senate was always there waiting for the House conferees to catch up.

Senator PERCY. You've had your commercial now. We have the same comedy between the House and the Senate in Washington. Our next panel consists of two outstanding public servants in the State of Illinois, both of whom I consider to be not only good friends, but close associates, and we've worked together on many, many projects.

I'd like to give a special welcome to Hon. Pres Bloom, the Illinois State senator representing Peoria, and Mr. John Castle, director of Illinois Department of Commerce and Community Affairs.

Senator Bloom, I can think of no one who has worked any harder than you have on the regulatory reform at the State level. The Illinois State Legislature has enacted a number of measures that serve as models for what I hope the U.S. Congress and the Vice President's task force on regulatory relief can accomplish over the next few years. You have initiated a systematic review of existing rules over a 5-year period. Your new State Mandates Act reimburses local governments for the costs imposed by State regulation. You have established a joint legislative committee on administrative rules. Under your chairmanship this highly visible committee will exercise broad powers to review State regulatory programs, take exceptions to them whenever necessary, and make recommendations for change. We need such a similar committee I know in the U.S. Congress. We look forward very much to your testimony, and I can assure you that I will ask the Vice President's task force to pay particular attention to your comments. You may proceed.

TESTIMONY OF PRESCOTT E. BLOOM, ILLINOIS STATE SENATOR, PEORIA, ILL.; AND JOHN W. CASTLE, DIRECTOR, ILLINOIS DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS, SPRINGFIELD, ILL.

Mr. BLOOM. Thank you. It's an honor and a pleasure to be allowed to offer some brief comments, Mr. Chairman. To a degree in your introduction you gave my speech. But essentially we have tried to take an approach that goes beyond just the slogan "Regulatory Reform." It's a very popular slogan. I noted that when President Reagan proposed the task force he spoke in terms of regulatory relief, and he stated that he intended it to be more than just another Presidential task force that files its reports and is soon forgotten. He stated they're seeking tangible results, and I think that the effort that you're making in going out and getting tangible testimony to reinforce the efforts of the task force, of course, is extremely important and laudable.

I'm wearing two hats. The hat as chairman of the joint committee on administrative rules and also as a member of the National Conference of State Legislatures Regulatory Committee. We met with Mr. Boyden Gray last March, who, as many of you know, is the counsel to the task force in this area, and he has indicated that they are going forward and going after many of the absurdities and inequities in the Federal regulatory scheme.

Now, I had to make a talk out in Salt Lake City in December, and I went to Webster's Dictionary and looked up reform, and it says it is "the amendment of that which is defective, vicious, depraved and corrupt." I don't think that all regulation is defective, vicious, depraved, or corrupt. Quite the contrary. I think if we all think about it, there are regulations that are important to protect us, to protect the worker in the workplace, to protect the businessman from predatory practices of fellow businessmen, to protect the environment and so forth.

We have taken the approach in Illinois is that overregulation, regulation which is unnecessary, excessive, unmonitored and unaccountable and needs to be changed. Now I chose those words carefully because regulations should be limited to fulfilling their specific purpose; they should be subject to wide scrutiny, and they should be based on accountability and a responsiveness to the public. And I think that many of the examples Herman Brummet made, focus on the latter weakness of the regulatory scheme at both the Federal and State level, and that is the lack of accountability and responsiveness to the public. If they don't meet these tests, then they must be replaced or abolished, I would say, altogether.

Regulatory failure occurs when an agency has not done what elected officials would have done—and I'm quoting Cutler and Johnson in their seminal work on the subject—"Had the elected officials had the time and possessed the information and the will to so act."

You know, Mr. Chairman, and I know, we both know probably far better than a lot of others, we're the ones who catch the heat when the bureaucrats begin to act in an unaccountable way and are not adequately monitored.

In Illinois we have probably been a laboratory of democracy experimenting with new approaches and in one sense the States, are probably a little ahead of the Congress. In our State we have in place in the area of regulations the Joint Committee on Administrative Rules. The committee is bicameral and bipartisan, and operates with 16 members under a revolving gavel. We have a professional staff of 18, including about 10 attorneys, and a combined budget of about a quarter of a million dollars. We basically review the rules and regulations coming out of the executive branch at the State level, which are the program people, and there are 4,000 of them with a combined budget of $125 million.

I understand the Congress has committees and subcommittees that do a tremendous amount of regulatory oversight. However, the problem, and I don't know how you can address it, Mr. Chairman, is that with all the subcommittees and committees, there is no comprehensive or systematic perspective and approach to monitoring regulations. In other words, that makes your job that much more difficult because of what's known as the "iron triangle" syndrome, the fact that a subcommittee with a limited jurisdiction is too subject to a cozy relationship with the agencies and regulated groups in its substantive area. Effective control of regulations also depends on a commitment to a vigorous regulation review process by each and every subcommittee chairman, a situation that is unlikely to ever develop. The present structure is too concerned with specific substantive issues—it can't see the forest for the trees.

I think that your Joint Committee on the Budget at the congressional level works well because it is a central monitoring structure, and in the area of getting a handle on excessive and unresponsive regulation you need a central monitoring structure in addition to visibility, concern, and commitment.

Another step that can be taken, and this is more process testimony, I understand, is a systematic review of existing rules. Our committee is charged once every 5 years to basically do "sunset" review of existing rules. We go over every rule on the books every 5 years to toss it out if it's not working well. Now, our committee has only been in place every 4 years, and we only began this function 2 years ago. So far it's working fairly well. There is resistance on the part of the agencies to have "a bunch of greasy-lipped legislators looking over their shoulders". But the ultimate effect has been rulemaking, and the effect on the public has been subjected to wider scrutiny and discussion; we have taken the congressional concept of the legislative veto, which I think is a really excellent tool in your armitorium, and lodged it within the Joint Committee. But I think that the veto can only be really effective as a tool if it's part of a central monitoring device.

The fourth step, and I would commend this to you most strongly, would be to pass some kind of Federal counterpart to the State Mandates Act. Senator Graham, Senator John Knuppel, and I helped pass this, and we had no pride of authority. We borrowed it from California. Basically it's an experiment in self-limitation, and it requires the State to reimburse local governments for the costs of complying with any mandate imposed by State law or regulations. It has not been an easy effort, and the jury is still out on its ultimate benefit, but it is a step in the right direction.

I would urge Congress to make the same kind of effort to accept responsibility for the effects of Federal regulations on State and local governments. Too often they have imposed all kinds of regulations. I think the Clean Air Act is a prime example.

Under the threat of the withdrawal of Federal highway dollars, the States have basically been rubberstamping whatever the EPA says ought to be your State plan. I think one of the most significant factors increasing the impact of Federal agencies on State programs and regulations has been the continuing use of categorical grants. I am a very strong supporter of President Reagan's efforts to replace the categorical grants with the block grants, because I believe it will not only increase the efficiency of the operation of the programs, but it will also significantly reduce the regulatory impact of these programs.

Categorical grants create a stranglehold on State programs, and if the State regulations do not include every single requirement the agency wants in the regulations, then the categorical grant funds are either withheld or delayed. And I'll give you an example, Mr. Chairman. The State of Illinois has rules and regulations, 150 pages of them, covering in detail how we will lay pipelines in oceans. You have to think about that. I almost slipped that one by. But, as part of the Federal program, our Illinois Commerce Commission had to adopt as part of a whole set of regulations 150 pages of regulations saying how if we ever, ever have another Stone Age or something, and we want to lay

pipelines in any oceans in Illinois, we know how to do it now from soup to nuts. And we wouldn't get out Federal cheese if we didn't do it because when they came forth with this rulemaking and we said what the heck is that all about. It's all about a Federal mandate. Now the connection between categorical grants and regulatory form may not be obvious, but it's very real and important, and I'd urge you to move as quickly as you can given the political realities to get that program in place.

I'm submitting my testimony today with a set of detailed comments on specific regulatory reform proposals that are being considered. Senator Laxalt's and others. The comments have been submitted to your staff. I hope that I've been able to highlight the nature of reg reform and what we're about here in Illinois while trying to respond to the concerns of Herman and David and all these good people who are here to talk to you. May I just conclude with a caution and an observation that perhaps you can take back to Washington, and, that is, as with chastity, congressional power, especially rulemaking authority, is never lost, and it's always given away. So I thank you for your attention, and I thank you for the opportunity to communicate.

Senator PERCY. Thank you, Senator Bloom, very much for your stimulating and enlightening, very knowledgeable testimony. We will hear from another good friend, John Castle, the director of the Illinois Department of Commerce and Community Affairs. Regulatory reform, John, is just one of many projects that we have in common. With the encouragement of the Governor, I work for you as the chief export sales manager for all Illinois projects, whether it is beans, corn, coal, manufactures, goods, or services. In this regard we have worked closely together on regulatory reform. In a conference of this same Energy Subcommittee in Carbondale, Mr. Castle spoke 3 weeks ago on the subject of how we can start exporting Illinois coal with the Governor and Lieutenant Governor O'Neill, joining with high-ranking officials from six nations.

I think for the first time in the history of Illinois we have brought to the attention of the world the coal resources we have here, the largest bituminous coal resources in the United States. We are the Saudi Arabia of not only alcohol fuels, but of coal as well. And I can well recall when we were startled at the conference to have one nation, Spain, place an order for 126,000 tons of Freeman-United Illinois coal for the Spanish cement industry, and we at long last found an industry that needs high sulfur coal. That was to my knowledge the first foreign government that has placed an order for Illinois coals in our history, and we hope to follow it with many, many other purchases from other nations. I intend to use the position that I have as chairman of the Foreign Relations Committee to, as Mayor Daley would have said, "use our clout" to open doors all over the world to bring the world here to see Illinois' export potentials in many, many different fields. What we want to do together, John Castle and I and Dave O'Neill, is to create more jobs, to make available Illinois products, and to help strengthen the balance of trade between the United States and the rest of the world.

We look forward to your testimony today, John, and I want to thank you also for the very fine statement that Peter Censky of your office

made at our hearings in Quincy yesterday. The full text of your comments will be incorporated in the record. You can summarize them in any way you see fit.

Mr. CASTLE. Thank you very much. I appreciate the opportunity to be here. Appearing with me is the chief salesman, chairman of the Foreign Relations Committee. You will be pleased to know, Senator, that the coal that you spoke of sold to Spain went out of the port of New Orleans, the first load, so we're on our way with that. I think it's appropriate, Senator, that you mentioned your efforts and the State's effort in the field of export in all areas, coal-manufactured products in the context of this hearing, because after all the businessman may have a great product, may have great export opportunities, may have great market opportunities in this State, is really out of business if he's suffocated by regulation, if he cannot produce that product at a competitive price on behalf of Illinois business. Competition is fierce in the world markets.

We see regulation as a very important factor in making Illinois products in many cases uncompetitive. Recently, Governor Thompson and the department of commerce and community affairs conducted a series of small business conferences in six cities throughout the State. At the conclusion of those conferences, the general assembly in a bipartisan effort, convened business leaders from all over the State in Springfield, bringing together 300 or 400 business leaders and businessmen and women to discuss the problems of regulation and problems of business generally.

I can assure you that the horror stories that you're hearing here today, and that you heard yesterday, and you'll hear as you continue on with these hearings, were very much in evidence at those conferences. Illinois businessmen unanimously identified regulation after regulation, and it's one of the principal problems faced by them in their day-to-day lives. I think it has to be said that businessmen in Illinois, and I imagine throughout the Nation, are not crying for abolition of all regulations. The cry really is for sanity. Sanity in the application of regulations, and sanity in the administration of regulations, and for God's sake someone looking at the regulations to insure that only those regulations that are absolutely necessary ever see the light of day.

You've heard all the numbers that are tossed about every time regulation is talked about. Forty-four hundred different types of federally approved forms, other than tax and banking forms, the hundreds of millions of man-hours that are involved, but you know in my position, as Director of the Department of Commerce, those numbers take on a reality as I talk to business people day in and day out who discuss the kinds of problems that they're having.

The contractor, for example, who was trying to remodel a Holiday Inn in northern Illinois had OSHA inspectors on his premises every day, was cited with violations every day, called us finally out of desperation. Well, we looked into it, found out what his problem was, not that he was running a bad site, he just had the very bad luck to be located across from the OSHA regional office, and they were using him as a training ground, things of that sort, which are really just nonsense finally.

As I state, I look at the departments of Federal Government that we deal with—HUD, EDA, EPA, CSA, DOL, DOE, and those are just a few that I jotted down. I know there are others. The regulations that we have to comply with as a State government, the forms that we have to fill out, are costing the taxpayers of this State, I believe, untold, unneeded, hundreds of thousands of dollars, and they're coming right out of our pockets without question. Even worse, those regulations have a tendency to stifle some very, very good programs that could be used effectively by local governments, used effectively by business.

I point to really two examples. One is the CETA program. CETA, as Fortune magazine said, is a dirty four-letter word. But, as a matter of fact, CETA programs have been used very effectively in the private sector for on-the-job training. Here in Peoria we are able to use a CETA grant in a very innovative way working with Mayor Carver and his staff, and Bradley University, to conduct a feasibility study regarding the Hiram-Walker plant. Hopefully that study will lead to continued employment at that plant. That's the plus side.

The downside is that we see layoffs from industries that have been terribly affected in this State by the recession. We find skilled workers, who because of CETA regiations, are not eligible for retraining programs, we can't help them in any way, and they move on to other States with a great drain from this State of skilled people, contributing citizens, people who ought to be encouraged to stay in this State given every tool to stay here.

Prescott Bloom referred to some of the EPA problems. The good side of that is that in this case the Federal EPA has delegated much of its permitting authority to the state EPA and simplified the process dramatically. And I would encourage the Congress to really lean hard on the Federal EPA to delegate more responsibilities to the States.

Well, Senator, I don't think it serves any purposes for me to speak at length of all the horror stories that I hear, my own experiences, and I am a businessman and a banker, and can speak to some of the problems that we have there from a personal standpoint. I think I can only say that, again, no one, a business, or government, or consumers object to reasonable government regulation. But I don't think anyone can rationally defend regulations that are arbitrary, that are unnecessary, and which fail any reasonable cost-benefit test. Senator, thank you very much for permitting me to appear. I will file my complete statement with the subcommittee. Thank you, sir.

Senator PERCY. Thank you very kindly, Director Castle. One question I'd like to ask you, and then one question for each member of the panel. I've been concerned at the very high portion of our export sales that come from a relatively small number of large companies, and the fact that smaller business, medium size business, is not getting a piece of the action. I wonder if you could insert in the record for these hearings the experience of Illinois in that regard and what you've been able to do to encourage small business to participate in export markets. I will insert in the record then the national pattern and how we compare with that and what can be done nationally to encourage business to get into exports. It seems to me in other countries small and medium business is very active in getting a very large part of the action in export markets. In this country we just seem to be more

oriented and those markets are not growing nearly as fast as some abroad.

Mr. CASTLE. Senator, you touched on a subject that really was a part of my remarks that I omitted in the interest of time, but it's extremely important. The State does operate a very active export program with a marketing people, foreign marketing people, and transportation people, who are skilled in those matters. We maintain three overseas offices. We assist any Illinois business, of course, in export activity, but, frankly, our efforts are directed to the small- and medium-size business. We do have many businesses throughout Illinois, rural Illinois as well as the Chicago metropolitan area, who have been extremely successful in the export field. It's a very, very important factor in the economy of this State. I think one out of every seven jobs in this State depends on export, is related directly or indirectly to export. But regulation, the subject we're talking about here, is keeping many small- and medium-size businesses out of export, and it really is. It's not simply a fear of regulation. After they see what has to be done, the licensing requirements, the paperwork that has to be done, they say nuts to it. We don't really see how we can turn a profit on our product, or it's a little too chancy, we'll take a pass this time. The requirement that certain kinds of shipments be relicensed each time, with the time delays that are built into the licensing process.

As the Senator knows, you've received many communications from the Illinois International Business Council and others on that subject. Something has to be done. If we're going to be competetive in world markets, we have to address the cost of our product and the cost of producing it. That's one side of regulation. We certainly have to address the cost of getting it overseas, and that's another side of regulation.

Senator PERCY. Thank you very much Mr. Castle. Mr. Zinser, maybe you can work your way back to this microphone here, and I'll put this one question to each of you as a final question to the panel. Could you give an estimate, either now or for the record, as to approximately what percentage of your own hassels or experiences with regulations are caused by the Federal Government regulations, and what proportion by State and local regulations? In other words, how much of the burden and problem do we have to deal with at the Federal level? Why don't we just start down with Mr. Ransburg.

Mr. RANSBURG. I would have to say, Senator, it's a very large percentage. I think the Federal Government, based on what's been said today, sets the tone for many of the agencies with whom people have had difficulties. So I'd have to say it's 80 percent or something like that.

Senator PERCY. Roughly 80 percent. Mr. Perlman.

Mr. PERLMAN. I would have to agree that the problems are a very, very high percentage. I think that this, if a study is made of it, you learn there are too many rewards going to the failures and not enough of the benefits going to the thrifty and the frugal and the people that helped build this country and community and made this economy strong. We're giving too many things away without too many qualifications to obtain them, and I think those percentages are extremely very, very high, Senator.

Senator PERCY. Right. Mr. Zinser.

Mr. ZINSER. My organization is a federally chartered organization. Therefore, the only regulations that directly effect us are Federal regulations. I guess my answer would be 100 percent.

Senator PERCY. A hundred percent. All right. Fine. Director Castle, would you have an estimate?

Mr. CASTLE. Yes. Our conferences, interviews with businesses would indicate that it's at least 85 percent or better. As a banker, chairman of a board of a State rural bank, I can tell you that our problems are 95 percent Federal and 5 percent State.

Senator PERCY. Very good. Mr. Brummet.

Mr. BRUMMET. At the present time I'd go 75 or 80 percent prior to deregulation when knowing it was a 100 perecnt, so we made a sizeable improvement.

Senator PERCY. Mr. Hoaglin.

Mr. HOAGLIN. Mr. Chairman, I'd say it's a difficult thing to quantify, but I'd go with the 75, 80, 85 percent figure that the other gentleman had proposed. I think it's symptomatic of a larger problem. I talked about philosophy earlier, and I think it's symptomatic of a general trend of over-regulation, of burdening Federal Government of a large amount of the public sector which is unrestrained by the economies of the private sector. There is no incentive in the public sector to be frugal, to be economic, to save a dollar, to meet a payroll. The incentive is to justify the existence of the agency and to justify each expenditure to get Federal funds, matching funds, to spend money for the sake of spending. Again, I don't have any suggestions exactly what could be done to restrain that, but I urge your support of the President's Executive order of February 2. Thank you.

Senator PERCY. Gentlemen, I want to thank you very much indeed for your extraordinarily valuable testimony. We very much appreciate it.

[The prepared statements of Messrs. Ransburg, Hoaglin (with response to written question from Senator Percy), Brummett, Bloom (with response to written questions submitted by Senator Percy), and Castle, follow:]

PREPARED STATEMENT OF DAVID P. RANSBURG

Senator Percy:

My name is David Ransburg, President of the L. R. Nelson Corporation of Peoria, Illinois. Nelson, which was founded in 1911, is a small manufacturer of quality lawn and garden sprinklers, couplings, nozzles and fittings, as well as underground sprinkling equipment.

I purchased the company from the Nelson family in October of 1972. Since that time, we have more than tripled the size of the business, created many jobs and have made a major contribution to our industry.

However, in each of the years I have run the business, it has become increasingly complicated and expensive to make business decisions because of the avalanche of legislation, regulation and taxes that the U.S. Congress and the Illinois Legislature have passed.

As you may know, small businesses such as Nelson represent approximately 40% of the Gross National Product and 60% of the jobs in the private sector. It is my understanding that there are over 200,000 small businesses in Illinois alone. Unfortunately, the recent avalanche of legislation, regulation and taxes has fallen heavily on small businesses (and therefore employees of small businesses) because small businesses often lack the staff or the financial resources to either effectively resist or comply. Intentionally or unintentionally this legislation, regulation and taxation has created a regressive cost for small business and has made it more and more difficult for many small businesses to attract or keep the capital and qualified people they need to survive.

Many of us in the small business sector feel that we as a nation face an uncertain economic future as a result of well-intentioned, but poorly implemented legislation and regulation. Historically our people have been innovative and productive. Ideas and hard work have steadily increased our standard of living.

However, as a result of government action, these innovative, productive people are becoming a confused and endangered species. Our government has gradually created a system which encourages the attitude that individuals are no longer responsible for solving their own problems, that someone else will take care of many of their problems for them. Government has promised a large number of people that it can provide them a risk-free life in which they are totally protected and in which nothing can go wrong, whether they are responsible and productive or not.

Unfortunately, this is a promise on which no government can deliver because the productive people will not continue forever to contribute their work product to such an unfair system of distribution.

90-375 O - 82 - 3

Our government should create an environment in which people are more responsible for their own actions, an environment in which saving, investment and productivity are rewarded. Government should create an environment in which jobs are created through encouraging investment, not using the tax system to transfer investment dollars into non-productive government programs.

Because today's hearings are being conducted to review the impact of regulation on business, I have attached a Regulatory Review of how various regulatory agencies or laws have impacted my business. We estimate that these regulations add 4-5% to our annual costs in addition to increases in material and labor costs.

However, in addition to providing these examples, I would like to make some recommendations to you as to how you might most effectively improve the environment for business, particularly small business.

The major problems facing small business today are inflation, lack of capital, excessive regulation and the loss of productivity resulting from these three problems.

These problems were discussed at length and a prioritized agenda was developed at the White House Conference on Small Business which was held in January of 1980. I strongly urge that Congress enact this agenda into legislation as soon as possible.

In order to deal specifically with the problem of excessive regulation, first we must identify the problem. I see the problem as follows:

1) There is no clear national regulatory policy (or purpose) against which all regulations can be evaluated.

2) There is no apparent coordination between regulatory agencies. This often results in conflicting or confusing regulations.

3) There is no well-defined way to make cost/benefit trade-offs. This often results in over-zealous regulators showing their bias towards total risk-avoidance or results in attempts to totally eliminate a problem with little or no regard for the cost/benefit relationship.

4) There is often inadequate input from those who will be most affected by the regulations or who have the practical knowledge to predict how new regulations will work in practice and what they might cost.

5) Regulations are excessively complicated and are not written in easily-understood language.

6) There is no readily available way to "regulate the regulator" except through the judicial process which is extremely slow and expensive, often beyond the resources of small businesses.

To address these problems, I would offer the following recommendations:

1) Develop a Regulatory Policy Statement, against which all regulations should be evaluated.

2) Develop a simple Regulatory Cost/Benefit System to make sure that the cost of proposed regulations is jusified by the estimated benefit.

3) Conduct follow up audits after implementation of regulations to insure that the cost/benefit objectives have been met.

4) Establish a Regulatory Review Commission responsible for the approval of all regulations. This Commission should be representative of the legislative and executive branches of government, as well as industry, labor and other appropriate segments of society who are concerned about cost-effective regulation. Perhaps it could have a rotating chairperson who has veto power. This could insure that there is a balanced and objective review process that can not be abused by an over-zealous bureaucrat.

5) Develop a responsive Issuance and Review Procedure outside of the judicial system. This could be used to:
   a) Review all existing regulations and eliminate or revise those which are conflicting or not cost-effective.
   b) Review future regulations before they are issued to make sure they comply with the Regulatory Policy Statement, are cost-effective and are clearly written.

6) Dramatically reduce the paperwork burden through innovative management. For example, you could require all agencies to pay a "market-rate" for anv information they require from business and require that the agency pay for such information as a line item in their budget. Such a procedure would establish a balance between the value to the agency and the price at which the person completing the form was willing to provide the information. This would eliminate the "hidden tax" implicit in unnecessary paperwork which presently costs the economy billions of dollars and which many people acknowledge is never used by the agency requiring its submission.

I believe it is important for Congress and the President to face our present economic crisis with the political courage to make some tough, long-term decisions that will affect our country for generations to come. I believe too many of the decisions made in the recent past have been influenced by short-term political expediency and the motivation to remain in public office rather than to do what is best long-term for the creativity and productivity of the people of our country.

I appreciate your allowing me to testify today and hope that my comments will be of value to you as you make proposals to the Senate and Vice President Bush's Task Force on Regulatory Reform.

David P. Ransburg

REGULATORY REVIEW

This review was conducted through informal conversations and estimates of our management. We believe that the effect of these regulations is to add 4-5% to our annual costs in addition to increases in material and labor costs which are not included in this review.

	Annual Implementation Cost		Potential Implementation Cost	
	One Time Expense $000	Annual Expense $000	One Time Expense $000	Annual Expense $000
Interest Rates (Inflation and Federal Reserve Board Policy) Like many small businesses we have not had access to adequate amounts of long-term capital to finance the growth of our business. In addition, we are a seasonal business and are forced to finance inventories and accounts receivable through short term loans. Because our marketing programs are announced several months in advance, it is often difficult, if not impossible, for us to pass on the high short-term interest costs to our customers. As a result, even in years when we show a substantial improvement in operating earnings, much of this improvement is passed on to our lenders.		1,400		
Because many of our customers are also small businesses without access to adequate capital, the entire credit area has become more expensive in terms of staffing, as well as bad debt experience.		100		
OSHA Over the past several years we have spent thousands of dollars to comply with the spirit, as well as the letter of the law. Because there are many machines which we have not been able to quiet through "engineering" means, we have furnished ear plugs in certain areas of our operation, which is more cost-effective than engineering means.	400	100		
However, we are concerned about certain proposed regulations. There has been an ongoing dispute between OSHA and EPA concerning the 8-hour sound level rules for employees in manufacturing plants. If the most stringent of these rules is enacted, it is possible we will not be able to comply through engineering means without replacing several pieces of equipment. While it is possible that new equipment could increase our overall productivity, it is doubtful that it will increase it sufficiently to justify such a major capital outlay and could result in the loss of several jobs.			2,000	500
EPA As a result of the enactment of several EPA regulations, many of our smaller suppliers (such as foundries) decided not to make the required investments but instead went out of business. This produced a contraction of capacity and a substantially increased cost of production for those who were left. We, of course, had to add these costs to the prices we charge for our products.		200		
In our company, we were cited by our local Sanitary District because of a lack of clarity concerning an EPA rule regarding industrial effluent. The Sanitary District encouraged us to hire a consultant who suggested that we spend $70,000 on equipment and $25,000 per shift to make our effluent as clean as if it had been processed by the Sanitary District. As our plant was only discharging 10 gallons per minute (approximately the amount a lawn sprinkler would discharge) it was difficult for us to believe this was necessary. Fortunately, we were able to make a "Rube Goldberg" type system at a nominal cost per year which substantially reduced their concerns but for which they would never give us a clear approval because they were not certain what the EPA's position would be.	10	2	70	50

	Actual Implementation Cost		Potential Implementation Cost	
	One Time Expense $000	Annual Expense $000	One Time Expense $000	Annual Expense $000
Interstate Commerce Commission (ICC)				
By granting a monopoly to truckers, the government has allowed them to generally charge excessive amounts for their services and to pass these costs on to the business community which has passed them on to U.S. Consumers.		100		
For example - Prior to deregulation, we determined that by hauling our own loads, we could save $500 per trip in transporting parts between two of our facilities. We have found, as a result of deregulation, that carriers are now more willing to provide good service at a reasonable rate. After some shakeouts occur, trucking deregulation will be a good thing for the economy.		50		
Warranty Laws				
As a result of the Magnuson Moss Legislation regarding consumer warranties, we were forced to make a number of decisions in a very short period of time. Our company, which had been in business for over 60 years and had always prided itself on the way it treated its customers, decided to remove all mention of warranty from our products. This was done because of the amount of space which would have been required for the display of required warranty information and the cost associated with maintaining a retail warranty information system. There was also some uncertainty on the part of our lawyers for what the possible legal ramifications would be if we were to provide an "unlimited" warranty which approximated what we were doing but appeared to us to create an open-ended liability of uncertain magnitude.	25			
We assume that this change cost us some sales but are not sure to what extent.		100		
Internal Revenue Service (IRS)				
The U.S. Government has created a tax system which is so complicated that it is beyond anyones' ability to comprehend it.				
Many of the areas are so gray that an excessive amount of time is spent within a company or with accountants and attorneys either deciding what treatment to give various transactions or defending them upon examination by the IRS. These hours and dollars produce nothing for the economy.		50		
As a result you have many entrepreneurs spending excessive amounts of time looking for ways to minimize taxes, rather than spending that time to improve their operations.				
The Consumer Product Safety Commission (CPSC)				
As a result of the rules promulgated by this agency, many companies in the hardware industry have dropped out or have withdrawn products from the market. Those who remain have had to add substantial amounts to their product cost to comply with these rules and have seen a marked decrease in unit volume as the consumer declines to pay for all of the mandated safety features.				
In our increasingly litigous society our industry has seen a marked increase in product liability insurance costs and even though we make a very safe product, we have seen our product liability costs increase by 100% in the past 5 years.		13		
TOTAL	435	2,115	2,070	550

PREPARED STATEMENT OF DENNIS HOAGLIN

The Grigoleit Company of Decatur, Illinois is a manufacturer of decorative appliance trim, appliance knobs, and allied products and presently employs approximately 160 persons. This statement reflects our experience with the Occupational Safety and Health Administration. It will demonstrate the malignant effect of relatively unrestrained regulatory license to subvert the liberties embodied in our Constitution and the diversion of valuable resources from their productive role in our free market system. It is the story of just one business but representative of countless others persecuted by a philosophy. It is this philosophy of oppressive enforcement and adversary sentiment which has wrought grave injustice in a system whose sole objective was intended by Congress to be the higher cause of protecting the health and safety of the American worker.

In March of 1979, OSHA compliance officers appeared at our plant to make an inspection due to an employee complaint which had been received at the Peoria Area office of OSHA. As this statement will later explain, the complaint was investigated and found meritless and did not become part of the ill-conceived action against the Company which is the subject of this testimony.

We at Grigoleit take pride in our safety program and certainly have nothing to hide either in the way the shop is run or in the physical plant itself. We also believe strongly in the preservation of basic property rights and freedom from unreasonable search and seizure guaranteed by the Constitution. We believe that these rights must sometimes be exercised if they are to be preserved. Therefore, we have adopted a policy of requiring a search warrant of OSHA for all inspections.

On March 2, 1979, this policy was thoroughly and politely explained to the compliance officers who appeared at our plant. The officers reacted with slight indignance but left the plant and nothing further was heard from OSHA until May 2 when a compliance officer presented a warrant and promptly commenced the pursuant "hygiene inspection".

For the record, it should be noted that the Company contends as it then asserted that the warrant was defective and an abuse of regulatory function in several aspects. First, it was obtained ex parte, without the Company being given an opportunity to assert its Constitutional rights to ascertain that a test of just cause was appropriately applied, based upon facts from which the magistrate could find reasonable basis to believe that a violation of the act existed at our plant. Also, the warrant infringed upon our Constitutional freedom from unreasonable search in that it was not reasonably restricted to the specific areas of Grigoleit property referenced in the employee complaint from which it was derived. Instead, it allowed a virtually unlimited search of all Grigoleit property, i.e., a "wall to wall" inspection.

Over these objections, the compliance officer was allowed to enter the plant on May 2 without delay and was escorted by myself and the local union president acting as employee representative in the matter.

Since the employee complaint which originated the inspection alleged only harmful "fumes" in specific areas of the plant, extensive air sampling was conducted in the course of the inspection. The results confirmed the results of a similar OSHA inspection in 1978, indicating that suspected air contaminants were present only in trace amounts or were not detectable at all. Consequently, no citation resulted from these studies.

However, as a result of noise monitoring conducted in an area unrelated to the complaint during the two day inspection of 1979, a citation, $360.00 penalty, and rigorous and burdensome abatement schedule were issued. OSHA gave no advice whatsoever as to how abatement could be achieved.

Because the noise analysis was, for various and obvious reasons inconclusive and improperly and unprofessionally conducted, the Company made the decision to contest the citation, penalty, and abatement requirements. Confident that we were guilty of no wrong-doing, we thus began what turned out to be an eight month gauntlet of harassing, oppressive, and unnecessary prosecution tactics by OSHA designed to cudgel us into submission.

It would be beyond the scope of this testimony to include full and particular detail regarding each of the several serious flaws in OSHA's noise survey and of their misapplication of OSHA standards. Though fully supported by a file which grew to several inches in thickness by the end of OSHA's eight month tirade, the evidence which Grigoleit planned to present at trial is outlined briefly below.

(1) The wrong portion of the OSHA noise standard 29CFR1910.95 was applied. Noise at press 82 was classically exemplar of impulse noise and contrary to instructions of the OSHA Field Operations Manual then in effect, this factor was not properly taken into account. Instead, the compliance officer utilized a monitoring approach suitable only for continuous/intermittant noise. (1910.95 provides two discreet noise standards - one for continuous/intermittant noise, i.e. table G-16, and a separate criteria, 140 db, for employee exposure to impulse noise.)

(2) The type 2 general purpose sound level meter and the dosimeter utilized by the compliance officer do not have a sufficient crest factor[1] to provide a reliable measure of noise in the presence of impulse type noise. In fact, it is well recognized that these instruments will grossly overstate results in the presence of impulse noise due to their characteristic of "slow" expotential averaging which is mathematically incompatible with calculating exposures on a five decibel exchange rate as incorporated in the G-16 table of OSHA's noise standard.[2]

(3) One of the three dosimeter readings taken at the time of the inspection was wildly discrepant, recording a noise level of 3,561% of the allowable exposure limits. This grossly variant reading could not be explained by the compliance officer who could only attribute it to "dosimeter malfunction". This reveals the

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1. A descriptor of a noise measuring instrument's ability to accurately follow rapid and significant variations in sound pressure level.

inherant unreliability of the dosimeter and cast serious doubt on the validity of the other two readings, one of which was the principle basis for citation and raised doubts as to the professional compentency and objectivity of the compliance officer.

4. The compliance officer did not calibrate the audio dosimeter at the inspection site and there was direct evidence that his "pre-inspection calibration record" was completed after the inspection. This suggests that the calibration record may have been "doctored" by the compliance officer.

5. The OSHA Hygiene Field Operations Manual in use at the time of the inspection required a minimum of ten (10) back up sound level meter readings in support of an audio dosimeter reading before a citation could ensue. Only four such back up readings were taken in this case by the compliance officer.

An affirmative defense motion based upon the inapplicability of the continuous noise standard was made in the earliest stages of the citation contest proceedings as was a motion to exclude evidence based upon the lack of reliability of measurement techniques used by

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2. Several acousticians including Thomas H. Rockwell of Chesterland, Ohio, Lewis S. Goodfriend of Cedar Knolls, New Jersey, and George Kamperman of Downers Grove, Illinois have reminded the Department of Labor through formal petitions or other channels of the significance of this in enforcement of the standard. Even more interesting, perhaps, is the acknowledgement of OSHA's own John Barry of the serious shortcomings of the audio dosimeter in an address to Noise-Con '79 held at Purdue Univeristy.

To put it succinctly, such doltish misapplication of the law's requirements has thrown hundreds, perhaps, thousands, of employers into instant "violation" of the law in a fashion unintended by Congress. One can only wonder how many small businesses, unlike Grigoleit, have chosen to submit to OSHA either because of their false trust in the agency's application of the standards or lack of wherewithal or financial ability to stand against the onslaught of the nearly boundless resources of "Big Brother".

OSHA during the inspection. OSHA's representative countered that such charges were "frivolous... and wholly lacking in foundation, substantiation or sponsorship".

It was only after OSHA had harangued us for eight long months at tremendous expense that they were forced to admit, if only to themselves, that our defense was neither frivolous or lacking in foundation, substantiation or sponsorship due to the tremendous volume of supportive documentation which we had amassed. It was then and only then - just two weeks before we were scheduled to go to trial, that OSHA relented and withdrew their complaint due to "lack of evidence", artfully preventing the embodiment of the truth of our defense in the case law of the OSH Review Commission record.

It is our firm belief that this has been OSHA's mode of operation, to prostitute the Constitutional right of due process, turning it into a gauntlet of bureacratic entanglement. Witness twenty-eight pages of senseless interrogatories finally overuled by the administrative law judge as "overly broad and oppressive". Witness especially interrogatory number five on pages five through twenty-two which would literally have required the employment of a full time job analyst for each and every of our factory employees for each and every work day from May 1, 1978 to May 1, 1979! Further, these were clearly "form" interrogatories as reference was made in them to Grigoleit's "Kankakee, Illinois plant" when we actually have no plant other than our Decatur facility.

Furthermore, what of the <u>tremendous monetary expense</u> of all this totally unnecessary intrusion into the conduct of our business? Besides, the obvious incurrance of legal fees, our defense entailed retaining

of an expert noise consultant, purchase and rental of special purpose sound measuring equipment, consultation with a West Coast attorney specializing in regulatory matters, and untold hours of our limited staff.

Though there was no time to keep a detailed accounting of this expense, it would not be unreasonable to estimate a total direct-dollar expense of $30,000-and bear in mind that our 8 month encounter fell short of actually going to trial! It would not be unreasonable to further assume that a typical manufacturer with an after tax profit margin of 4% would have to generate sales of $750,000 to recoup this loss! At this rate, Grigoleit Company would have to sell 5,597,014 of its micro-wave oven knobs, enough to outfit 1,119,402 ovens, to simply regain its direct expense!

What of the cost of lost opportunities of the many productive pursuits including safety projects which the Personnel Director may have undertook save for the intervention of OSHA which could have had a direct affect in enhancing the safety and welfare of Grigoleit employees?

It is little wonder that we are left to ask how long can this country continue to afford such wasteful, counterproductive, and high handed misdirection of our valuable resources.

It is beyond comprehension that Congress could have envisioned the vesting of so much power in the hands of nonelected officials, and it is these officials whose capricious interpretation of the law can through a simple internal memorandum throw hundreds of employers into instant "violation" of the law.

Such malignancy in our regulatory process has turned the regulator into a fourth and unintended branch of the government which makes and enforces rules and regulations with discreet power of law and against which businessmen and other citizens have little remedy.

Unless decisive action is soon taken, the scenario described above is destined to repeat itself. The remedy lay not in an increase of OSHA staff or funding as these would have magnified the conflict of our encounter. What must be changed is the operational philosophy of OSHA.

OSHA should respond to violations with advice and concilliation. Enforcement must be concentrated where serious injuries most often occur and smaller businesses and those with good safety records should be exempt from routine inspections. OSHA would find the majority of businesses willing to cooperate in finding practical solutions to real safety problems.

Finally, legislators must stop the abdication of their powers to regulators. Regulators must remain as creatures, not creators of the law.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY SENATOR PERCY

Question:

Mr. Hoaglin, your testimony offers a perfect example of the problems small businessmen face when dealing with Federal inspectors. During our Quincy hearing, we heard several complaints about how well these inspectors are trained, how knowledgeable they are about the industries they cover, and how courteously they perform their duties. I would like to hear your general comments about the quality of OSHA inspectors and their work, and I would especially like to hear any suggestions you may have for improvements. Would you respond to this?

Answer:

Since OSHA's inception in 1970, Grigoleit's plant in Decatur has been the subject of at least four inspections. The conduct of the inspectors became a matter of concern during two of these inspections. On the first of these occasions, the compliance officer became quite surly when told he had unfortunately happened to pick a very inconvenient time to inspect. It seems that the Personnel Director, General Manager, Plant Manager, and others on our limited staff who would be appropriate management representatives to accompany him on the walk-around were either away from the plant or unavailable. When this was explained by the elderly controller, the inspector became quite indignant, threatening to fetch a U. S. Marshall if necessary to proceed with the inspection.

Since there was no element of "imminent hazard" nor was there any reason to suspect that we were hiding or "sanitizing" any violative conditions, we felt that the compliance officer's behavior was inappropriate and unprofessional. There should be some provision for consideration of the convenience of the business operation in such circumstances, unless conditions, such as an imminent hazard, dictate otherwise.

The attitude and conduct of the inspector was a real problem during our ill-fated inspection of 1979. The result of this inspection is the topic of my testimony given before the subcommittee on July 2, you will recall.

Following the second day of inspection, the Union President and I were discussing safety with inspector John Mahoney of the Peoria Regional Office. I remarked that I felt safety dollars, like any other dollars, must be spent where they will do the most good. If resources are limited, for example, to one million dollars and can be spent either on a project which would save one hundred lives or on one which would save six lives, then a decision would have to be made. The decision would be obvious, but difficult due to the harsh effects of economic reality. To this the inspector replied "This brings to mind what (a past U.S. President) said about managers: 'they're all sons of bitches'."

I can't help wondering how such bias affected the performance of his duties. As I find it difficult to attribute his faulty noise monitoring to ignorance, I honestly feel it may have been his ill will which gave birth to the citation which proved so costly for us to refute.

Earlier, Mr. Mahoney and I were having a discussion over lunch. In the course of our conversation, Mr. Mahoney bragged of how he had saved a nail manufacturer tens of thousands of dollars per year by telling them that their competitors were no longer degreasing their nails as the finishing stage in the production process. The company stopped degreasing their product at a substantial savings, he boasted. In another example, he bragged of saving a manufacturer considerable expense by telling them they could substitute a less expensive material in construction of their packing crates, just as their competitors were doing.

We feel that such conduct is an egregious and unwarranted interference into our free enterprise system. I wonder if OSHA inspectors have related details of Grigoleit production processes to our competitors.

Perhaps this story is an isolated one and perhaps not. I have heard accounts of other inspectors' conduct being equally despicable. Contrariwise, I have met other inspectors and administrative personnel who have earned my respect.

It has been said that a "new breed of people" is needed in key positions at OSHA. To a considerable extent, this is true in order to ameliorate the adverse relationship between OSHA and business. We need logical, impartial, and practical thinkers who adhere to the highest professional standards.

In a recent communication to OSHA field personnel (instruction CPL 2.47) OSHA chief Thorne G. Auchter told compliance officers that OSHA's "ability to build cooperative rather than adversarial relationships in the interest of workplace health and safety" depends largely on them because "for most employers and employees," compliance officers "are the personification of OSHA".

Mr. Auchter is to be commended for his insight and commitment to high standards of inspectors' conduct. To this I would only add one suggestion: There should be no question that any inspector demonstrating an attitude contrary to such standards be promptly subject to removal from the agency.

To sum, our experience with inspectors has been mixed. Recalling our experience with OSHA in 1979 in which an illfounded citation resulted from grossly defective inspection techniques (I refer again to the episode described in my testimony of July 2) I feel that the citation could not have resulted solely from the inspector's ignorance or lack of training. More likely it was the result of malice or bias on the part of the inspector as well as it is otherwise inconceivable that the inspector could act in so flagrant disregard of the clear instructions of his field operations manual. Hopefully, Mr. Auchter's programs of reform and his recent instructions will found a movement toward more impartial and constructive conduct among inspectors. In this we urge the support of your committee and the Vice Presidential Task Force on Regulatory Reform.

Thank you.

RESPONSE OF MR. ZINSER TO WRITTEN QUESTION SUBMITTED BY SENATOR PERCY

Question:

Mr. Zinser, in the report I shall soon present to Vice President Bush's Task Force, I would very much like to present some case examples of regulatory agencies which are performing their functions well. I was very pleased to hear you speak well of the Federal Home Loan Bank Board. Do you think this agency might serve as a model for good federal regulatory performance? Is there anything you think other agencies can learn from them?

Answer:

Yes, Senator, I do believe there are positive lessons to be learned from the Federal Home Loan Bank Board and its supervisory agents operating through the district Federal Home Loan Bank system.

The Bank Board regulates and supervises, and performs this dual role in a manner that leads me to the belief that the Federal Home Loan Bank system knows that the savings and loan system has a job to do, that is provide home loans and an inviting investment alternative. To do this job, the S&L's need guidance and assistance and supervision that enables them to do the job in a legal, profitable, and honorable style. The Bank Board, under the current and previous chairmen particularly, and the executives of the Federal Home Loan Bank of Chicago with whom I deal directly, seem to say: "How can we help you do the job the right way?" Other regulators seem to say at times: "Let us think of reasons to tell these folks they cannot do that which they desire to do"!

I feel that the Federal Home Loan Bank of Chicago is staffed by caring individuals, not by entrenched bureaucrats who view regulations as an end in and of themselves. The Federal Home Loan Bank Board has acted in the last two years as an entity concerned with and knowledgeable of the industry it regulates. That attitude has not made the Board a "pushover" for those regulated, but rather a body that took into account the reason for regulations and the predicament of those who are regulated. Perhaps the small but talented number of Board members (three!) lends to the capacity to adopt this open-minded attitude.

PREPARED STATEMENT OF HERMAN BRUMMETT

Senator Percy and members of the Bush Task Force, my name is Herman Brummett and I am with Apollo Oil Company located in Peoria, Illinois. I am also a member of the Illinois Petroleum Marketers Association which I am representing here today.

Briefly, Illinois Petroleum Marketers Association is comprised of over 900 members who are independent businessmen operating as marketers and jobbers of petroleum products in every county in the State of Illinois. Our members are vitally interested in what affects the petroleum industry which is why I am appearing before you today.

These jobbers and marketers own and operate their own businesses. Their operations vary in size from as small as 300,000 gallons a year to some as large as 50,000,000 gallons a year. Many of these jobbers operate under branded names and others operate under their own independent name. Therefore, you have the views of both the branded and unbranded segment of the petroleum marketing industry. Our members will feel the ultimate wrath of the public because we serve the consumer. Many of our members are small jobbers or marketers, owning tank wagons, pick up trucks and using common carriers for the transportation of petroleum products. However 35% of our jobbers also own transports and pick up the product at refineries and terminals throughout Illinois and adjoining states, and transport the product to their bulk plants or directly to service stations or large commercial accounts. The jobbers deliver 80% of the agricultural demands for gasoline, fuel oil and diesel fuel. They serve a large percentage of industrial users.

Our Association for the past several years has had to concentrate its efforts on trying to decipher and provide information to the membership regarding various regulations published by various agencies. Thank God, President

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Reagan decontrolled petroleum products on January 28, 1981. This lifted a heavy burden off the backs of petroleum marketers throughout the nation. Although we have been deregulated, the Department of Energy, the Environmental Protection Agency and the Department of Transportation have continued to come forth with rules and regulations that have a vital effect on the businesses of our members.

Recently, the Department of Transportation proposed an increase in insurance on all transports and tank wagons that was astronomical and impossible to comply with. Our own major insurance carriers sent letters to us stating that the type insurance required by the proposed regulation was unattainable and our policies would have had to be placed with high risk companies. Naturally, the cost would have been prohibitive. Through the efforts of each Illinois Member of Congress, the Department of Transportation changed the ruling so that it was more favorable to petroleum marketers. Also, DOT is asking that we change our decals on all trucks. This will be the second time in five years that we have changed the decals. The first change was to a diamond-shaped decal and now they are asking that these diamond decals contain certain numbers indicating the type of product being hauled. Again, a group of our Illinois Jobbers met with people in the Department of Transportation in Washington and hopefully this will be modified. Otherwise, it would mean that our trucks would have to have several different numbers on each truck. Our transportation equipment is required to carry not only gasoline, but fuel oil, diesel fuel and gasohol. At one time, all products had different numbers and has now been changed by the State of Illinois in the past few days so they have one number. Still, the expense of over $30.00 per truck is required to change the decals.

The Department of Energy has continued to send out forms asking that our members fill them out. They are conducting telephone surveys which can take several minutes

of our members valuable time. Forms take sometimes a day to complete and for the life of us, we do not know what the information is used for except to compile volumes and volumes of statistics.

They have continued to harrass our members with Department of Energy Audits even though regulations have been dropped and in many instances, our members were audited four or five years earlier. At that time, auditors told them to set up their books in a certain fashion and today, the auditors are saying that the way the books is set up is all wrong and should have been set up another way. Our members are susceptible to fines which could amount to several thousands of dollars. The harrassment and time taken by the owner and employees to provide the necessary information for these auditors require several days. After the audit is completed, our members are forced to hire attorneys to defend themselves from mistakes that were made because of the vagueness of the DOE regulations. If it had not been for the Findley Amendment, which you Senator handled so admirably in the Senate, the Department of Energy would have continued their policy of making their regulations retro-active as much as one year back from the date of the issuance of it. No one could comply with these regulations.

Finally, the Environmental Protection Agency has taken it upon themselves through the Clean Air Act to cause our people numerous headaches and the expense of thousands of dollars. The United States EPA has asked each state to present a State Implementation Program (SIP) for cleaning up the air. In many instances, they have denied the original SIP's plan and asked for more severe ones. The Illinois EPA has included certain counties in their more stringent regulations primarily because the U. S. EPA and neighboring states have asked that Illinois make the plans more severe so they would not have

to do the same in their state. Namely Boone and Winnebago counties in Northern Illinois have been forced to go to the full extent on Stage I because the State of Wisconsin requested it. Yet, the State of Wisconsin did not require the neighboring counties in their state to go to these stringent regulations. The biggest problem we have had with EPA and the U.S. EPA is that they will not recommend or tell our members what kind of equipment they are required to install. They will, in turn, neither approve or deny the equipment that is installed. In many instances, after the equipment was installed, our members found out they could have used a much less costly type of equipment.

In fact, in the Peoria area, where we have always been blessed with several terminals, I find that the following terminals are being closed as far as distribution of gasoline is considered: The Mobil Terminal now only handles fuel oil; Clark Oil Company and Martin Oil Company will also only handle fuel oil; The Texaco Terminal is closing completelyand several months ago the J.D. Streett Terminal was closed in Havana. I am sure that this has happened not only in the Peoria area but throughout the state. The stringent EPA rules and cost of equipment to comply has made these older terminals unprofitable to operate today.

I might also add that EPA has, since its conception in the mid-1970's, placed regulations on station owners, operators and dealers that deliver leaded gasoline into the tank of an automobbile designed for no-lead gasoline. This regulation is a nightmare. With the tremendous progress that self-service has made in Illinois, it makes it practically impossible for a dealer or a manager to watch every car that pulls up to his pumps. The individual who is putting gasoline into his car has been known to become quite violent when told he cannot use regular gasoline in a no-lead vehicle.

Likewise, this also applies to OSHA concerning self-service, the National Fire Protection Agency has stated that we can use the clips in the handles of our pump hoses, yet, OSHA

states we cannot. Here are two different agencies telling us to different stories. CONFUSING ISN'T IT.

In conclusion, if the bureaucrats in Washington D.C. do not quit writing so many rules and regulations that continue to harass and harness our independent businessmen in this country, the small businessman will disappear from our economy and the large corporations will be greatly hampered in trying to be competive with foreign competitors. A prime example of this would be the automobile industry which is taking it on the chin and many of the problems can be traced back to Government regulations. The foreign automobile manufacturers are not hampered by OSHA Rules, EPA regulations, etc.

Thank You

PREPARED STATEMENT OF PRESCOTT E. BLOOM

ILLINOIS STATE SENATOR

"REGULATORY REFORM" IS A POPULAR SLOGAN THESE DAYS. IT'S BEING BANDIED ABOUT IN WASHINGTON AND IN STATE CAPITOLS THROUGHOUT THE NATION BY PUNDITS, POLITICAL PHILOSOPHERS AND POLITICIANS OF EVERY STRIPE. I'VE BEEN ASKED TO SPEAK TO A WIDE VARIETY OF GROUPS ABOUT REGULATORY REFORM LATELY AND I'VE DISCOVERED SOMETHING VERY INTERESTING: EVERYONE CAN AGREE THAT REGULATORY REFORM IS NECESSARY, BUT WHEN WE START TO FLESH OUT PARTICULAR CHANGES -- SPECIFIC REFORMS -- IN THE REGULATORY PROCESS AND SPECIFIC REGULATIONS, WHEN WE BEGIN TO ADD SOME SUBSTANCE TO THE REGULATORY SLOGAN, WE END UP ARGUING. ONE MAN'S REFORMS ARE ANOTHER MAN'S ROAD TO RUIN.

PRESIDENT REAGAN HAS PROMISED ACTION -- REGULATORY RELIEF -- NOT JUST TALK ABOUT REGULATORY REFORM. LET ME QUOTE A COUPLE OF HIS REMARKS WHEN HE CREATED HIS PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF: "I INTEND THAT THIS BE MORE THAN JUST ANOTHER PRESIDENTIAL TASK FORCE THAT FILES A REPORT AND IS SOON FORGOTTEN. WE'RE SEEKING REAL REFORM AND TANGIBLE RESULTS." PROMISING REFORM AND RESULTS RAISE BIG EXPECTATIONS. THE PROBLEM FULFILLING THOSE EXPECTATIONS IS THAT THE EXPECTATIONS IN MY MIND ARE LIKELY TO BE QUITE DIFFERENT THAN THE EXPECTATIONS IN YOUR MIND. IT'S HARD TO MAKE REFORM A MEANINGFUL GOAL WHEN WE CAN'T AGREE WHAT IT MEANS.

I'VE EVEN LOOKED UP "REFORM" IN THE DICTIONARY. LISTEN TO THIS DEFINITION FROM WEBSTER'S NEW COLLEGIATE DICTIONARY: "THE AMENDMENT OF WHAT IS DEFECTIVE, VICIOUS, CORRUPT OR DEPRAVED." WHEN WE SAY WE NEED "REGULATORY REFORM," ARE WE SAYING THAT OUR REGULATORY PROCESS IS VICIOUS? DO WE MEAN THAT THE VERY NOTION OF REGULATION IS DEPRAVED? I HOPE NOT. I THINK EVERYONE IN THIS ROOM KNOWS THAT SOME REGULATION IS BENEFICIAL, EVEN ESSENTIAL. REGULATION PROTECTS WORKERS FROM UNSAFE WORKING CONDITIONS, PROTECTS CONSUMERS FROM DECEPTIVE

BUSINESS PRACTICES, PROTECTS THE ENVIRONMENT, PROTECTS BUSINESSES FROM EACH OTHER — EACH OF US COULD PROBABLY EXTEND THE LIST OF EXAMPLES OF GOOD REGULATION, ALTHOUGH YOU MIGHT HAVE TO TAILOR IT A LITTLE TO SUIT YOUR PERSONAL PREFERENCES. SOME OF YOU MIGHT HAVE LISTS THAT ARE A LITTLE LONGER, OR A LITTLE SHORTER THAN MINE, BUT WE'D EACH HAVE A LIST. NONE OF US THINKS THAT REGULATION IN GENERAL IS BAD.

LET ME TELL YOU WHAT I THINK WE MEAN WHEN WE SAY THAT REGULATORY REFORM IS NECESSARY. WE MEAN THAT REGULATION WHICH IS UNNECESSARY, EXCESSIVE, UNMONITORED AND UNACCOUNTABLE NEEDS TO BE CHANGED. I CHOSE THOSE FOUR WORDS CAREFULLY. REGULATIONS SHOULD BE NECESSARY TO FULFILL A SPECIFIC PURPOSE; THEY SHOULD BE LIMITED TO MEETING THAT PURPOSE; THEY SHOULD BE SUBJECT TO WIDE SCRUTINY; AND REGULATIONS SHOULD BE BASED ON ACCOUNTABILITY AND RESPONSIVENESS TO THE PUBLIC. SPECIFIC REGULATIONS WHICH DO NOT MEET THESE TESTS NEED TO BE CHANGED AND CORRESPONDING CHANGES NEED TO BE MADE IN THE REGULATORY PROCESS TO MAKE SURE THAT NEW REGULATIONS ARE NOT ADOPTED WHICH ARE AS BAD OR WORSE THAN THOSE BEING ELIMINATED. REGULATION WHICH IS UNNECESSARY, EXCESSIVE, UNMONITORED AND UNACCOUNTABLE NEEDS TO BE REFORMED.

I THINK THE PERSPECTIVE PRESENTED BY CUTLER AND JOHNSON IN THEIR 1975 ARTICLE "REGULATION AND THE POLITICAL PROCESS" COMES CLOSEST TO DEFINING HOW THE REGULATORY PROCESS SHOULD OPERATE. THEY SAY THE REGULATORY PROCESS IS OPERATING PROPERLY WHEN AGENCIES REACH THE DECISIONS THAT POLITICALLY ACCOUNTABLE OFFICIALS WOULD HAVE REACHED IF THEY HAD DECIDED TO MAKE THE DECISION THEMSELVES INSTEAD OF DELEGATING IT TO THE AGENCY. LET ME QUOTE THEIR OWN WORDS:

> REGULATORY "FAILURE"...OCCURS WHEN AN AGENCY HAS NOT DONE WHAT ELECTED OFFICIALS WOULD HAVE DONE, HAD THEY EXERCISED THE POWER CONFERRED ON THEM BY VIRTURE OF THEIR ULTIMATE POLITICAL RESPONSIBILITY. AGENCIES...FAIL WHEN THEY REACH SUBSTANTIVE POLICY DECISIONS (INCLUDING DECISIONS NOT TO ACT) THAT DO NOT COINCIDE WITH WHAT THE POLITICALLY ACCOUNTABLE BRANCHES OF GOVERNMENT WOULD HAVE DONE IF THEY HAD

> POSSESSED THE TIME, THE INFORMATION, AND THE WILL TO MAKE SUCH DECISIONS. (Cutler and Johnson, "Regulation and the Political Process," 84 Yale Law Journal 1399)

WE NEED TO DESIGN MECHANISMS TO INSURE THAT REGULATION IS ACCOUNTABLE AND MONITORED BY POLITICALLY ACCOUNTABLE OFFICIALS --AT BOTH THE STATE AND FEDERAL LEVELS.

IN ILLINOIS, WE HAVE TAKEN SOME SIGNIFICANT STEPS TOWARD REFORMING REGULATION IN THE PAST SEVERAL YEARS. TAKING THOSE STEPS HAVE NOT BEEN AS EASY, OR AS GLAMOROUS, OR EVEN AS POPULAR, AS TALKING ABOUT REGULATORY REFORM. IT HAS REQUIRED DETERMINATION, COMMITMENT AND A LOT OF HARD WORK. SOME OF THE STEPS WE HAVE TAKEN CAN SERVE AS USEFUL MODELS FOR ACTION WHICH IS NEEDED AT THE FEDERAL LEVEL. THIS IS ONE AREA WHERE STATES HAVE BEEN FUNCTIONING AS "LABORATORIES OF DEMOCRACY," EXPERIMENTING WITH NEW APPROACHES TO CONTROLLING REGULATION. FRANKLY, I THINK THE STATES ARE SIGNIFICANTLY AHEAD OF THE FEDERAL GOVERNMENT IN THIS AREA. THE TIME IS RIPE TO TAKE WHAT WE'VE LEARNED AND APPLY IT TO CONGRESS AND THE FEDERAL AGENCIES, WHERE THE NEED IS EVEN GREATER BECAUSE THE REGULATIONS HAVE BROADER EFFECTS.

LET ME OUTLINE FOUR STEPS THE ILLINOIS LEGISLATURE HAS TAKEN TO GET A HANDLE ON STATE REGULATIONS. ALONG THE WAY, I'LL ILLUSTRATE THE RESULTS OF THESE STEPS WITH A FEW EXAMPLES AND ALSO SUGGEST HOW SIMILAR STEPS COULD BE TAKEN IN WASHINGTON.

FIRST, THE ILLINOIS LEGISLATURE HAS ESTABLISHED A CENTRAL, VISIBLE, LEGISLATIVE UNIT TO CAREFULLY MONITOR EACH NEW REGULATION PROPOSED BY STATE AGENCIES. THE UNIT, KNOWN AS THE JOINT COMMITTEE ON ADMINISTRATIVE RULES, WAS CREATED IN 1977 WITH BROAD AUTHORITY TO REVIEW, STUDY, MONITOR, ISSUE OBJECTIONS AND MAKE RECOMMENDATIONS ON RULES AND REGULATIONS. THE COMMITTEE IS BICAMERAL AND BIPARTISAN, APPOINTED BY THE LEGISLATIVE LEADERS, COMPOSED OF 16 MEMBERS, MEETS AT LEAST MONTHLY THROUGHOUT THE YEAR AND IS STAFFED BY A MULTIDISCIPLINARY TEAM OF ABOUT 18 PROFESSIONALS, INCLUDING ABOUT 10

ATTORNEYS. THE LEGISLATURE HAS PROVIDED THE STRUCTURE AND THE RESOURCES TO REALLY EFFECTIVELY EXAMINE STATE REGULATIONS. THERE IS NO SUBSTITUTE FOR THIS TYPE OF SERIOUS COMMITMENT BY THE LEGISLATURE TO MONITOR THE REGULATORY PROCESS.

ALTHOUGH THE STRUCTURE OF CONGRESS IS SIGNIFICANTLY DIFFERENT THAN THE STRUCTURE OF THE ILLINOIS LEGISLATURE, I AM CONVINCED THAT CONGRESS WILL NOT BE ABLE TO EFFECTIVELY MONITOR FEDERAL REGULATIONS WITHOUT SOME TYPE OF CENTRAL STRUCTURE DEDICATED SOLELY TO THAT TASK. THE STANDING COMMITTEES AND SUBCOMMITTEES OF CONGRESS HAVE BEEN DELEGATED OVERSIGHT RESPONSIBILITIES AND SOME OF THESE UNITS ARE MAKING AN EFFORT TO REVIEW REGULATIONS WITHIN THEIR SUBSTANTIVE AREAS, BUT THIS TYPE OF STRUCTURE CANNOT EFFECTIVELY CONTROL REGULATIONS FOR A NUMBER OF REASONS. (1) IT LACKS A COMPREHENSIVE, SYSTEMATIC PERSPECTIVE AND APPROACH. (2) IT IS TOO CONCERNED WITH SPECIFIC SUBSTANTIVE ISSUES -- IT CAN'T SEE THE FOREST FOR THE TREES. (3) IT LACKS VISIBILITY. (4) IT IS TOO SUSCEPTIBLE TO A COZY RELATIONSHIP WITH THE AGENCIES AND REGULATED GROUPS IN ITS SUBSTANTIVE AREA -- THE "IRON TRIANGLE" SYNDROME. (5) IT DEPENDS ON COMMITMENT TO A VIGOROUS REGULATION REVIEW PROCESS BY EACH AND EVERY SUBCOMMITTEE CHAIRMAN, WHICH IS UNLIKELY TO EVER DEVELOP.

A FOOTNOTE CUTLER AND JOHNSON INCLUDED IN THEIR SEMINAL 1975 ARTICLE SAID "WE CAN HARDLY HOPE FOR A NEW JOINT COMMITTEE ON ECONOMIC REGULATION WITH POWERS THAT WILL PARALLEL THOSE OF THE NEW JOINT COMMITTEE ON THE BUDGET" (Page 1412). THE JOINT COMMITTEE ON THE BUDGET TO THE EXTENT THAT IT HAS FUNCTIONED WELL HAS DONE SO PRECISELY BECAUSE OF THE ELEMENTS WHICH I SEE AS NECESSARY IF CONGRESS IS EVER GOING TO GET A HANDLE ON FEDERAL REGULATIONS: VISIBILITY, CENTRALITY, CONCENTRATION, AND COMMITMENT.

AN EXAMPLE FROM OUR EXPERIENCE IN ILLINOIS MAY ILLUSTRATE THE BENEFITS OF CENTRALIZING THE REVIEW OF REGULATIONS IN A SPECIALIZED COMMITTEE. EARLY IN 1978, WHEN THE ILLINOIS JOINT COMMITTEE WAS JUST BEGINNING TO FUNCTION, THE DEPARTMENT OF PUBLIC HEALTH PROPOSED A COMPREHENSIVE SET OF RULES TO REGULATE HOME HEALTH AGENCIES, SUCH AS

VISITING NURSES. THE REGULATIONS CLEARLY EXCEEDED THE DEPARTMENT'S STATUTORY AUTHORITY, IMPOSED UNNECESSARY COSTS FOR PROFESSIONAL STAFF ON THESE BUSINESSES, AND REQUIRED REAMS OF PAPERWORK. THE JOINT COMMITTEE ISSUED OBJECTIONS TO THE RULES, HELPED PUT TOGETHER A RESOLUTION URGING RECONSIDERATION OF THE RULES BY THE DEPARTMENT AND RECOMMENDED STATUTORY CHANGES TO SPECIFICALLY PROHIBIT THE ADOPTION OF MANY OF THE PROVISIONS OF THE PROPOSED RULES. THE STRONGEST LEGISLATIVE OPPOSITION TO THE COMMITTEE'S ACTION CAME FROM LEGISLATORS WHO SERVED ON THE STANDING COMMITTEES WITH OVERSIGHT RESPONSIBILITY FOR HUMAN SERVICES; IF WE HAD RELIED ON THOSE COMMITTEES TO MONITOR REGULATIONS, THESE EXCESSIVE, UNAUTHORIZED REGULATIONS WOULD HAVE BEEN IMPLEMENTED. BECAUSE OF THE JOINT COMMITTEE'S EFFORT, A REASONABLE COMPROMISE WAS REACHED AFTER ABOUT A YEAR OF HAGGLING AND THE DEPARTMENT ADOPTED SIGNIFICANTLY MODIFIED REGULATIONS. THE REGULATIONS NOW EFFECTIVELY PROTECT THE PUBLIC WITHOUT EXCESSIVE COSTS FOR HOME HEALTH AGENCIES AND WITHIN THE LIMITS OF THE STATUTORY AUTHORIZATION. THE REASON THE PROCESS WAS EFFECTIVE INVOLVED VISIBILITY, CENTRALITY, CONCENTRATION AND COMMITMENT TO REGULATORY ACCOUNTABILITY.

THE SECOND SIGNIFICANT STEP WE'VE TAKEN IN ILLINOIS TO CONTROL REGULATION IS THE ESTABLISHMENT OF A SYSTEMATIC PROGRAM TO REVIEW ALL OF THE EXISTING RULES OF ALL STATE AGENCIES. CONDUCTED BY THE JOINT COMMITTEE OVER FIVE YEARS, THIS SYSTEMATIC REVIEW SUPPLEMENTS THE ON-GOING REVIEW OF NEWLY PROPOSED RULES. THE MAIN OBJECTIVES ARE TO WEED OUT OBSOLETE RULES, TO POINT OUT CONFUSING LANGUAGE TO AGENCIES, TO STREAMLINE PROCEDURAL RULES, AND TO IDENTIFY OVERLAPPING AND CONFLICTING REGULATIONS. THE REVIEW IS ORGANIZED BY SUBJECT AREAS TO INSURE THAT SIMILAR RULES ARE REVIEWED TOGETHER, REGARDLESS WHICH AGENCY ADOPTED THE RULES.

LATE LAST YEAR WE FINISHED THE REVIEW OF OCCUPATIONAL LICENSING REGULATIONS. ALTHOUGH THIS IS NOT AS GLAMOROUS AS REVIEWING BUSINESS REGULATIONS OR ENVIRONMENTAL REGULATIONS, WE DISCOVERED SOME FACETS OF THESE REGULATIONS WHICH WERE BADLY IN NEED OF REFORM. IN FACT, OUR REVIEW RESULTED IN MAJOR REVISIONS OF ALMOST EVERY ONE OF

THE 28 SETS OF RULES WE REVIEWED. LET ME CITE JUST TWO EXAMPLES OF THE TYPES OF PROVISIONS WE DISCOVERED.

MANY OF THESE SETS OF RULES HAD A REQUIREMENT THAT AN INDIVIDUAL APPLYING FOR LICENSURE MUST HAVE TWO OR MORE LICENSED MEMBERS OF THAT OCCUPATION ENDORSE HIM. IN MOST CASES, THE STATUTORY AUTHORITY THE AGENCY USED TO JUSTIFY THESE RESTRICTIVE ENDORSEMENTS WAS "GOOD MORAL CHARACTER" LANGUAGE. THERE WERE SOME SLIGHT VARIATIONS ON THIS BASIC THEME; POTENTIAL DENTAL HYGIENISTS, FOR EXAMPLE, HAD TO OBTAIN ENDORSEMENTS FROM LICENSED DENTISTS. ALTHOUGH IT WOULD BE HARD TO EVALUATE THE ACTUAL EFFECT OF THESE RULES, THEY CLEARLY RESTRICTED ENTRY INTO THE PROFESSIONS AND PROBABLY HAD SOME EFFECT ON THE COST OF SERVICES. ONE MEMBER OF THE MEDICAL EXAMINING COMMITTEE CAME BEFORE OUR COMMITTEE TO DEFEND THIS KIND OF PROVISION IN THE LICENSING OF PHYSICIANS. HE EXPLAINED THAT DOCTORS WERE THE ONLY APPROPRIATE JUDGES OF THE MORAL CHARACTER OF OTHER DOCTORS. IN ALMOST EVERY CASE, THE AGENCIES AGREED TO REMOVE THESE PROVISIONS, WITHOUT OUR FORMAL OBJECTION.

IN THE DEPARTMENT OF REVENUE'S RULES ON ADMINISTERING OUR STATE SALES TAX, WE DISCOVERED ANOTHER PROVISION WHICH MAY PARALLEL SITUATIONS IN SOME FEDERAL AGENCIES. THE DEPARTMENT ISSUES BINDING OPINIONS TO TAXPAYERS WHO ASK SPECIFIC QUESTIONS ABOUT THE REGULATIONS' APPLICATION TO THEIR PARTICULAR CIRCUMSTANCES. THE DEPARTMENT USES THESE OPINIONS AS PRECEDENT. THE PROBLEM TAXPAYERS FACE IS THAT THE DEPARTMENT KEEPS THEM SECRET. CONCEIVABLY, I CAN OBTAIN SOME TAX BENEFIT ON THE BASIS OF THE DEPARTMENT'S RESPONSE TO MY INQUIRY, BUT YOU WOULD NEVER KNOW ABOUT IT, EVEN IF OUR SITUATIONS WERE IDENTICAL. WE THEREFORE DECIDED TO INTRODUCE LEGISLATION TO REQUIRE THESE BINDING OPINIONS BE AVAILABLE TO THE PUBLIC. THE ECONOMIC BENEFIT TO THE TAXPAYING GROUP IS OBVIOUS.

DESPITE THE VIRTUAL IMPOSSIBILITY OF MEASURING THE PRECISE ECONOMIC EFFECTS OF THESE TWO PROVISIONS ON THE PUBLIC, I THINK EVERYONE HERE WOULD AGREE THAT THESE PROVISIONS WERE IMPROPER AND NEEDED REFORM. THE METHODS FOR MEASURING ECONOMIC EFFECTS OF

REGULATIONS ARE IMPERFECT, BUT THAT'S NOT AN EXCUSE TO IGNORE UNNECESSARY, EXCESSIVE AND BURDENSOME REGULATIONS.

THE TYPE OF SYSTEMATIC REGULATORY REVIEW WE HAVE BEGUN COULD BE USED AS A MODEL BY CONGRESS. ALTHOUGH GETTING A HANDLE ON NEW REGULATIONS IS IMPORTANT, WE NEED TO GO BACK AND WEED OUT THE VOLUMES OF OUTDATED, OBSOLETE, AND OVERLAPPING FEDERAL REGULATIONS. INDIVIDUALS AGENCIES DO NOT HAVE THE INCENTIVE OR THE PERSPECTIVE TO UNDERTAKE THAT KIND OF REVIEW. THE PRESIDENT'S TASK FORCE OR THE OFFICE OF MANAGEMENT AND BUDGET MIGHT BE ABLE TO DO IT EFFECTIVELY, BUT I'D ARGUE THAT CONGRESS WOULD BRING A DISTINCTIVE LEGISLATIVE PERSPECTIVE TO THIS TYPE OF REVIEW WHICH WOULD MAKE THE RESULTS MUCH MORE ACCOUNTABLE AND RESPONSIVE TO THE PUBLIC.

THE THIRD STEP WE'VE TAKEN IN ILLINOIS TOWARD REGULATORY REFORM IS THE ADOPTION OF A GENERAL LEGISLATIVE VETO MECHANISM. THE JOINT COMMITTEE THROUGH THIS MECHANISM CAN BLOCK THE ADOPTION OF A PROPOSED REGULATION FOR SIX MONTHS, IF IT FINDS THAT THE REGULATION WOULD SERIOUSLY THREATEN THE PUBLIC; THE FULL LEGISLATURE CAN PERMANENTLY PROHIBIT THE ADOPTION OF A PROPOSED REGULATION BY PASSAGE OF A JOINT RESOLUTION. ALTHOUGH WE HAVE ONLY USED THIS MECHANISM ONCE SINCE IT BECAME EFFECTIVE AT THE BEGINNING OF THIS YEAR, IT HAS INCREASED THE RESPONSIVENESS OF AGENCIES TO THE COMMITTEE'S ADVISORY OBJECTIONS. THE COMMITTEE'S PRIMARY FUNCTION REMAINS ADVISORY; WE CAN ONLY UTILIZE THIS DRASTIC MECHANISM IN DRASTIC SITUATIONS.

CONGRESS HAS ENACTED LEGISLATIVE VETO PROVISIONS IN VARIOUS STATUTES AS A MEANS OF INSURING ACCOUNTABILITY FOR PARTICULARLY IMPORTANT REGULATIONS. THE FEDERAL ELECTION COMMISSION IS A GOOD EXAMPLE OF THIS TYPE OF MECHANISM; EITHER HOUSE CAN VETO REGULATIONS PROPOSED BY THE COMMISSION. ENERGY REGULATIONS HAVE ALSO FREQUENTLY BEEN SUBJECTED TO LEGISLATIVE VETO PROVISIONS. THESE PROVISIONS ARE NOT PARTICULARLY EFFECTIVE, HOWEVER, BECAUSE THEY ARE SPORADIC, APPLY ONLY TO LIMITED TYPES OF REGULATIONS AND DEPEND ON MONITORING BY STANDING CONGRESSIONAL COMMITTEES.

IF CONGRESS IS GOING TO SERIOUSLY COMMIT ITSELF TO REGULATORY REFORM, A GENERAL LEGISLATIVE VETO MECHANISM WOULD PROVIDE THE NECESSARY AUTHORITY TO MAKE THE PROCESS EFFECTIVE. COUPLED WITH THE OTHER STEPS I HAVE OUTLINED, IT COULD BE THE KEY ELEMENT IN INSURING THAT REGULATION IS ACCOUNTABLE.

FINALLY, THE FOURTH STEP I WANT TO DISCUSS TODAY: ILLINOIS HAS RECOGNIZED THE IMPACT STATE REGULATIONS OFTEN HAVE ON LOCAL GOVERNMENTS. WE HAVE ATTEMPTED TO CONTROL THAT IMPACT THROUGH A NEW STATE MANDATES ACT. THE ACT, MODELED AFTER A CALIFORNIA LAW, REQUIRES THE STATE TO REIMBURSE LOCAL GOVERNMENTS FOR THE COSTS INVOLVED IN ANY MANDATE IMPOSED BY STATE LAW OR REGULATIONS. IT IS AN EXPERIMENT IN SELF-LIMITATION, AN ATTEMPT TO TAKE RESPONSIBILITY FOR THE EFFECTS OF OUR ACTIONS. IT HAS NOT BEEN AN EASY EFFORT, AND THE JURY IS STILL OUT ON ITS ULTIMATE BENEFITS, BUT IT IS A STEP IN THE RIGHT DIRECTION.

I WOULD URGE CONGRESS TO MAKE THE SAME TYPE OF EFFORT, TO ACCEPT RESPONSIBILITY FOR THE EFFECTS OF FEDERAL REGULATIONS ON STATE AND LOCAL GOVERNMENTS. TOO OFTEN, FEDERAL AGENCIES HAVE IMPOSED REGULATORY REQUIREMENTS ON STATES WITHOUT ANY CONSIDERATION OF THE EFFECTS OF THOSE REQUIREMENTS. THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S DETAILED REQUIREMENTS FOR STATE IMPLEMENTATION PLANS UNDER THE CLEAN AIR ACT IS A PRIME EXAMPLE. UNDER THE THREAT OF THE LOSS OF FEDERAL HIGHWAY FUNDS, THE AGENCY WAS ABLE TO DICTATE VIRTUALLY EVERY PROVISION INCLUDED IN EACH STATE'S PLAN. CONGRESS NEEDS TO INSURE THAT FEDERAL AGENCIES RESPECT THE INTEGRITY OF STATE GOVERNMENT; CONGRESS HAS BEEN CONTENT TO ALLOW FEDERAL AGENCIES FREE REIN IN IMPOSING SUCH REGULATIONS. STATE REGULATORY REFORM EFFORTS ARE DIRECTLY HINDERED BY THE LACK OF ADEQUATE CONGRESSIONAL CONTROL OF THE FEDERAL REGULATORY PROCESS.

A RECENT LAW REVIEW ARTICLE ON THE EFFECTS OF FEDERAL GRANT PROGRAMS ON STATES AND STATE LEGISLATURES MAKES A POWERFUL ARGUMENT AGAINST EXCESSIVE FEDERAL REQUIREMENTS. THE ARTICLE'S SEARCH FOR EFFECTIVE LIMITS OF FEDERAL AUTHORITY CAN BE APPLIED TO

REGULATORY REQUIREMENTS AS WELL AS GRANT PROGRAMS; REGULATORY REQUIREMENTS AND GRANT PROGRAMS ARE OFTEN INSEPARABLE. LET ME QUOTE SOME OF THE ARTICLE'S CONCLUSIONS:

> EVEN THROUGH THE NATIONAL INTEREST IN THE ADMINISTRATION OF A GRANT PROGRAM IS STRONG, IT IS NOT STRONG ENOUGH TO JUSTIFY THE USE OF FEDERAL GRANTS TO SUBSTANTIALLY ALTER THE BALANCE OF POWER BETWEEN STATE LEGISLATURES AND GOVERNORS.... GRANTS ARE A PARTNERSHIP BETWEEN INDEPENDENT ENTITIES OF GOVERNMENT. IF THE NATIONAL GOVERNMENT WANTS PROGRAMS TO BE CONDUCTED IN A MANNER THAT CONFLICTS WITH STATE LEGISLATIVE AUTHORITY, CONGRESS HAS THE OPTION OF CHOOSING MECHANISMS OTHER THAN GRANTS-IN-AID. (George D. Brown, "Federal Funds and National Supremacy: The Role of State Legislatures in Federal Grant Programs," 28 American University Law Review, 312-313)

FEDERAL AGENCIES IMPOSING REQUIREMENTS FOR STATE AGENCY REGULATORY ACTIONS POSE A SIMILAR QUESTION: IS THE NATIONAL INTEREST STRONG ENOUGH TO JUSTIFY THE USE OF FEDERAL AUTHORITY TO SUBSTANTIALLY ALTER THE BALANCE OF POWER BETWEEN STATE LEGISLATURES AND GOVERNORS? SUCH REQUIREMENTS FREQUENTLY ATTEMPT TO VEST BROAD REGULATORY POWERS IN STATE AGENCIES AT THE EXPENSE OF LEGISLATIVE CONTROL OVER THE EXTENT OF SUCH POWERS.

REGULATORY REFORM AND "NEW FEDERALISM" ARE BOTH HIGH ON THE PRESIDENT'S AGENDA AND CONGRESS CAN TAKE SIGNIFICANT ACTION IN BOTH AREAS BY ENACTING A FEDERAL COUNTERPART TO THE ILLINOIS STATE MANDATES ACT. AT THE STATE LEVEL, WE CANNOT MAKE FEDERAL REGULATION ACCOUNTABLE AND WE CANNOT MAKE STATE REGULATION ACCOUNTABLE WHEN IT IS DICTATED BY FEDERAL REGULATION. WE NEED TO WORK TOGETHER TO CONTROL EXCESSIVE, UNACCOUNTABLE, UNMONITORED AND BURDENSOME REGULATION.

I AM SUBMITTING WITH MY TESTIMONY TODAY A SET OF DETAILED COMMENTS ON SPECIFIC REGULATORY REFORM PROPOSALS BEING CONSIDERED

BY CONGRESS. I HOPE THIS TESTIMONY HAS HIGHLIGHTED NOT ONLY THE NATURE OF REGULATORY REFORM, BUT ALSO SOME OF THE SPECIFIC STEPS CONGRESS SHOULD BE TAKING TOWARD MEANINGFUL REGULATORY REFORM. THE PATH TOWARD MEANINGFUL REGULATORY REFORM MUST BEGIN WITH A REASSERTION OF CONGRESSIONAL AUTHORITY OVER REGULATIONS. I HOPE THE STEPS I HAVE OUTLINED ALONG THAT PATH WILL BE USEFUL.

LET ME CONCLUDE WITH A VERY PERCEPTIVE OBSERVATION BY AN OREGON STATE LEGISLATOR. HE SAID, "AS WITH CHASTITY, CONGRESSIONAL POWER," ESPECIALLY RULEMAKING AUTHORITY, "IS NEVER LOST, RARELY TAKEN BY FORCE, AND ALMOST ALWAYS GIVEN AWAY."

NOTE: Since Senator Bloom speaks from notes, there may be changes in, or additions to, the text of this speech. He will, however, stand by quotations from this text.

COMMENTS ON U.S. SENATE REGULATORY REFORM LEGISLATION

The comments and suggestions offered in this memorandum are based on our experience during the past several years developing, implementing, and refining the Illinois Administrative Procedure Act with its vigorous approach to legislative oversight of the rulemaking agencies of state government. Many of the procedural questions and issues we have wrestled with are being addressed in bills at the national level. In addition, our experience in reviewing state rules mandated by federal rules provides us with a unique view of some of the serious intergovernmental issues involved. We hope that these comments will be useful as the Congress considers these bills.

This memorandum presents comments at three levels. First, some general comments on five common issues are presented. These five issues seem to be the key issues which Congress will need to resolve to reach a consensus on comprehensive regulatory reform legislation. Then, comments on each of the three bills we examined are presented. The substantive comments on these bills represent the second level of analysis. Technical comments represent the third level of analysis. The second level comments are the most detailed and we anticipate that they will be most valuable in refining the specific legislation which is being considered. A copy of the Illinois Administrative Procedure Act is appended to this memorandum for reference.

COMMON ISSUES

Five key issues have special importance in the development of federal regulatory reform legislation. These issues will need to be addressed by Congress if comprehensive regulatory reform legislation is going to be passed. These issues concern (1) legislative veto provisions, (2) cost/benefit analysis, (3) role of the courts, (4) sunset and rule review, and (5) intergovernmental effects of regulations. Comments based on Illinois' experience during the past several years will be presented on each of these issues.

1. Legislative Veto Provisions

One of the key issues Congress will be considering is whether or not the regulatory reform legislation should have a general legislative veto provision. Such a provision would allow the Congress in some way to disapprove proposed regulations when it found that they were undesirable. Since federal law currently has a number of legislative veto

provisions in specific statutes, this is not a major innovation, but it would be a significant extension of these provisions.

A number of state legislatures have found general legislative veto authority over regulations proposed by state agencies to be effective as a means of insuring continuity between legislative and executive policy-making. In Illinois, a legislative veto provision was added to the Administrative Procedure Act in 1980, when members of the Joint Committee on Administrative Rules and other legislators became convinced that agencies were not being responsive to the advisory objections which the Joint Committee had been issuing. The veto authority has not been utilized, but the existence of the authority seems to be having the desired effect of increasing the responsiveness of agencies to the advisory objections. Maintaining some means of effectively commenting on and changing agency rules short of actually vetoing them is an important principle. We would suggest that any federal regulatory reform legislation which is developed include some explicit procedure for the Congress, or a congressional committee, to publicly express its points of disagreement with proposed rules short of an actual veto.

If the Congress decides to include a legislative veto mechanism, two principles should be kept in mind. (1) The legislative branch should have a means of vetoing regulations which has less formality than a bill. Allowing the Congress to veto a regulation by bill adds no power to the legislative branch, since it is axiomatic that a statute can be passed to supersede a regulation. Although a single chamber resolution may not be appropriate, a joint resolution requiring the approval of the President has no advantages over a bill. In Illinois and most other states, intermediate forms do exist between single chamber resolutions and actual legislation. (2) Specific standards for the legislative veto action should be provided. Congress should not be given unbridled authority to veto any regulation which may be unpopular or politically sensitive. These standards might include failure to fulfill statutory objectives, conflict with legislative intent, unnecessary economic costs, serious harm to the economy, or infringement on the rights of citizens. The standards are essential to ensure that the legislative veto authority is used properly.

2. Cost/Benefit Analysis

States have tried a wide variety of cost/benefit analysis requirements in their Administrative Procedure Acts. On one extreme, the State of Washington enacted a provision encouraging agencies to consider the economic effects of regulations, which was

found to be too vague to be enforced. On the other extreme, Florida adopted a very comprehensive requirement, detailing numerous specific items which needed to be included in a cost/benefit analysis. The Florida requirement has been found to be excessive and is now undergoing a slow process of relaxation to ensure that agencies can comply without unreasonble costs.

Some middle ground seems most appropriate. The Illinois Administrative Procedure Act requires several simple items to be provided to the Joint Committee to assess the economic effects of the proposed rule. This information has not been as useful as it might be, but some progress has been made with this provision (see Section 5.01(b)).

The Reagan executive order and the indications that the Office of Management and Budget will be looking closely at proposed rules on a cost/benefit basis may reduce the need for including such a provision in the APA. The recent questions raised by the Office of Management and Budget about the costs and potential benefits of the Postal Service's proposed nine-digit zip code system indicates that the administration will be taking these efforts seriously. The only potential benefit of institutionalizing this process in the APA is to encourage greater public involvement in this analysis process.

Regardless of the specific form of the cost/benefit requirement, it is important that some central monitoring and oversight of the analysis process be provided. The Office of Management and Budget, the Congressional Budget Office, another congressional committee, or some other unit should have responsibility for insuring the consistency and accuracy of the analyses. Without some type of central monitoring, the provision is not likely to be very effective in actual practice.

3. Role of the Courts

Although courts have historically been involved in the review of agency regulations, a great deal of uncertainty exists as to the extent of judicial intervention in the rulemaking process. Although we have no direct experience on the issues involved in this area in Illinois, since there have been very few court cases involving the Illinois Administrative Procedure Act, we can highlight several principles for Congress' consideration. It is our opinion that clarification, rather than strengthening, would be most helpful on this issue.

First, courts have traditionally been very reluctant to overturn agency regulations, deferring to the expertise of the agency especially in technical or scientific areas. If the role of the courts in the regulatory process is to be increased, some explicit direction from Congress limiting the degree of deference to agencies will be necessary.

Most state courts also take a limited view of their ability to intervene in these issues, although few state legislatures have attempted to encourage judicial activism in this area. One innovative provision included in the Iowa Administrative Procedure Act requires a reversal of the burden of proof when the court challenge involves a rule objected to by a legislative oversight committee. Professor Arthur L. Bonfield is a strong proponent of this type of provision, viewing it as a viable alternative to the more popular legislative veto provisions.

A second point is that the role of the courts involves both procedural and substantive review of regulations. Courts ask both "Were these rules adopted properly?" and "Are these rules implementing the legislative intent of the authorizing statute?" Often courts seem to limit themselves to procedural review, ignoring substantive issues. Perhaps specific criteria could be enacted by Congress to guide judicial review of regulations, although the potential effectiveness of such criteria could be questioned.

4. Sunset and Rule Review

This set of questions is directly related to the discussion of legislative veto issues above. We feel that an effective legislative mechanism to consider and change agency regulations is essential to ensure proper legislative authority for law-making. As increasingly broad delegations of quasi-legislative authority to administrative agencies have been made and upheld, the legislative branch has lost effective control over much of its essential law-making function. Both sunset and rule review are procedures which could be used to reassert proper legislative authority over regulations.

The current assessment of the effectiveness of sunset mechanisms is that they have less potential for effective control over regulations than was initially thought. After the first surge of sunset programs, few additional states have adopted sunset programs in the past few years.

One difficult question faced in the adoption of these programs is what is to be sunsetted: agencies, statutes or regulations. Different sunset programs in the various

states operate at each of these three levels. We would suggest that the most effective level would be a combination of statutes and regulations. Since the explicit connection between the authorizing statute and the regulations adopted under the statute is not always clear, particularly in instances in which statutes are broadly worded, some difficulties would arise with this approach as well.

Rule review programs at the state level seem to be most effective when they are assigned to a special unit without other responsibilities. The current congressional procedure which relies on substantive standing committees to review regulations issued within the committees' policy arena does not provide the comprehensive review which is necessary to identify overlapping and conflicting regulations. It also tends to become privatized, failing to gain input from the wide range of perspectives in the legislative body. Combining specialized review by substantive committees with review of all rules by a Joint Committee has been tried in Wisconsin and several other states. It might provide a workable model for Congress.

The seminal article "Regulation and the Political Process" by Cutler and Johnson in 1975 presents a cogent case for the need for legislative reassertion of control over rules and regulations issued by executive branch agencies. While their specific suggestions may not be workable, the need for vigorous congressional scrutiny is clear. An institutionalized rule review process would be an important step in that direction.

5. Intergovernmental Effects of Regulations

Numerous federal regulations require corresponding regulatory action by state agencies. Sometimes such action requires new rulemaking authority to be granted by the state legislature. Often, federal funding of related state activities is contingent on adoption of the prescribed regulations. This relationship is complex, confusing and cumbersome in many policy areas in which competing public values must be weighed. Attention needs to be given by Congress to means of ensuring that federal agencies do not undermine the integrity of a state's regulatory process by mandating costly or unnecessary requirements. Preventing such abuses of power should be a major goal of federal regulatory reform efforts.

Illinois, following the lead of California and several other states, has adopted a similar approach to its relationship with local units of government. The Illinois State Mandates Act prohibits the imposition of most types of requirements on local units of

government, whether by statute, executive order or regulation, unless the need for the requirement is demonstrated and adequate funding is provided. This Act is likely to result in major changes in intergovernmental relations over the next several years. Some type of similar federal self-limitation should be considered.

One of the major difficulties in this area is the lack of any systematic method of identifying and tracking the relationships between federal statutes, federal regulations, federal grants, state statutes, state regulations, state programs, and state expenditures. The Regulatory Reform Committee of the National Conference of State Legislatures had laid an initial groundwork for a tracking system to identify these interrelationships, but this effort will involve a major project. Increased consideration of the effects of federal regulations on state laws, regulations and programs is a necessity to improve federal-state relationships.

A possible model to follow in implementing this type of suggestion might be the Regulatory Flexibility Act, which requires federal agencies to consider the impact of their regulations on small businesses. The most effective aspect of this legislation might be the use of the Small Business Administration to monitor agencies' compliance with the Act. The Advisory Commission on Intergovernmental Relations or the Administrative Conference might play a similar role in legislation requiring agencies to consider the impact of their regulations on state and local governments. The existence of some type of monitoring agency would be an important ingredient in making such a program effective. Both restructuring federal-state relationships and reforming the regulatory process are goals of the Reagan administration which could be advanced through this type of legislation. We would hope that the requirements could be stronger and more definite than those included in the Regulatory Flexibility Act.

LAXALT BILL

Substantive

1. Section 2 of the bill would amend 5 U.S.C. Section 551 and add as paragraph (16) a definition of the term "major rule." By this definition, "major rules" would include those having "an annual effect on the economy of $100,000,000 or more in direct and indirect enforcement and compliance costs." Because of the extreme difficulty agencies would encounter in determining "indirect enforcement and compliance costs," we suggest the deletion of that phrase from the definition. In the wake of

this deletion, it might also be appropriate to lessen the dollar amount mentioned, because the inclusion of indirect costs is probably one of the reasons that figure is currently so high.

2. Section 3 of the bill would substantially amend 5 U.S.C. Section 553. One of the changes would be the addition of subsection (b)(1)(C), which would exempt the following from the procedural requirements of Section 553:

> (any) interpretative rule, general statement of policy, or rule of agency organization, procedure or practice, other than an interpretative rule or general statement of policy that has general applicability and would have a substantial impact on the substantive rights of persons outside the agency. (Emphasis added)

As the law now stands, all interpretative rules, general statements of policy, and rules of agency organization, practice and procedure are exempt from compliance with subsection (b) of Section 553, and interpretative rules and statements of policy are also excepted from the provisions of subsection (d). Since the language underlined above clarifies the law and limits what agencies may do without notice and hearing, it is at least a step in the right direction. However, in our opinion it still allows too much agency action without public notice and public input. Another problem in this area concerns the adoption of conflicting policy statements and interpretations by different regions of the same agency. In our view, this problem might be ameliorated by a requirement that all general policy statements and interpretative rules be subject to general notice and hearing provisions and thus, that they be promulgated through the central agency office. (We are assuming that the term "person," as used in the above-quoted language, includes state and local governments as would seem to be required by 5 U.S.C. Section 551(2) and present case law. If this is not entirely clear, further statutory definition of the term "person" to include state and local governments would be in order. The Congress might also want to redefine "person" to exclude foreign governments to overrule the decision in Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769 (D.C.D.C., 1974).)

3. Section 3 of the bill would also add subsections (b)(1)(D) and (b)(2) to current 5 U.S.C. Section 553. Proposed (b)(1)(D) would exempt from compliance with Section 553 any

> rule for which the agency for good cause finds that notice and public comment are unnecessary due to the routine nature of the matter or the insignificant impact of the rule.

Proposed subsection (2) reads as follows:

> In the case of a rule for which an agency makes a finding under subparagraph (D) of paragraph (1) of this subsection, the agency shall publish the rule in the Federal Register with a statement of the finding of the agency under such subparagraph and the reasons therefor.

While we are aware that federal agencies promulgate many rules which are routine and arguably insignificant, we feel that these provisions would allow too much rulemaking to be done without notice and public comment, violating the spirit and purpose of the APA. Balancing the goals of keeping down the agency's cost of making routine rules and preventing misuse of these exemptions to the detriment of the public, it is our opinion that the above quoted portions of the bill should be eliminated. If it is decided that these exemptions should be kept, we would suggest that the phrase "for good cause" be deleted from (b)(1)(D); it adds little to the meaning of that provision, and has the potential for generating much confusion and litigation.

4. Section 3 of the Laxalt bill would further amend 5 U.S.C.A. Section 553 by creating subsection (b)(3), which sets forth requirements for agencies promulgating "emergency rules" (defined in Section 2 of the bill). From our point of view, there are several deficiencies in the provisions for emergency rules. First, although the publication of emergency rules is required, the bill is silent as to whether a rule may become effective before publication. It is our recommendation that the bill clearly set forth a provision whereby the effective date of each emergency rule may be established and made known.

Second, the bill provides that emergency rules "may not be effective longer than a reasonable period necessary to" comply with ordinary rulemaking procedures. Because of the vagueness of the term "reasonable," we feel that this provision could be abused by agencies seeking to avoid usual rulemaking procedures. As a result, it is our suggestion that agencies promulgating emergency rules be required to initiate the usually required rulemaking procedures within a specific period of time after the effective date of the emergency rules.

The third problem area we perceive in the bill's provisions for emergency rules is the lack of any frequency limitation. As it now stands the bill provides that emergency rules may remain effective for a "reasonable period." There is nothing prohibiting an agency from allowing an emergency rule to remain in effect until a court invalidates it (as having been in effect for longer than a reasonable period), and then promulgating a substantially similar rule to remedy this court-created "emergency." We suggest that Congress consider enacting language similar to the language in Section 5.02 of the Illinois Administrative Procedure Act.

5. Another change in current Section 553 contemplated by Section 3 of the Laxalt bill would be a requirement that the notice of proposed rulemaking in the Federal Register contain "the proposed provisions of the rule" (Proposed 553(c)(1)(C)). It is not clear whether the actual text of the proposed rule or just a general description of the rule's provisions would be required by this language. Therefore, we feel clarification is necessary. Furthermore, in light of our experience in Illinois, we suggest that proposed subsection (c)(1) contain requirements that rules which amend already existing rules indicate proposed changes in existing language and that repealers contain the full text of the repealed rule.

6. The Laxalt bill's Section 3 would also create subparagraph (E) of Section 553(c)(1), under which the notice of proposed rulemaking must include

> a description of the data, methodology, reports, studies, or other information upon which the agency intends to rely in the rulemaking, and of the purposes for which the agency plans to rely on such information, including an identification of the authors or source of such information.

The description contemplated by this subparagraph could run to hundreds of pages for some rules, and thus could become very cumbersome; it is our suggestion that a list of the materials relied upon be required instead of a description of all such materials. We note that agencies would be required by proposed Section 553(f)(1)(B) to keep copies of these materials, or information as to how they can be obtained, in the rulemaking file. We further note that the notice of proposed rulemaking would have to contain information as to how a copy of the rulemaking file may be obtained. We would suggest that information concerning how to obtain materials relied upon by the agency be published along with the list of the materials in the Federal Register. This would facilitate early public access to the materials, and might also obviate the need for proposed Section 553(f)(1)(B).

7. Nowhere in the Laxalt bill is it provided that agencies must consider each public comment submitted pursuant to Section 553. While it might be felt that this requirement is implicit in the statute, we feel that it should be spelled out.

8. Proposed Section 553(c)(2) concerns the promulgation of major rules, a subject which will be discussed in more depth below. We find the use of the term "adverse effects" in the subparagraphs (A), (D), and (E) of paragraph (2) troublesome because of its vagueness. We suggest that the term "adverse effects" be defined clearly so that agency personnel, the affected public and the courts will know what it means. One other term in paragraph (2) which may require clarification is "explanation of legal reasons," in subparagraph (E). We would suggest that a phrase such as "an explanation of reasons...accompanied by a memorandum of law supporting these reasons" be substituted.

9. The Laxalt bill imposes a heavy burden on agencies adopting major rules. They would be required to do a number of things in addition to those things required of any agency promulgating any rule, including the following (citations are to proposed sections of Title 5, U.S.C.):

   - prepare and publish a "clearly articulated," detailed cost-benefit analysis of the proposed major rule "in as precise and succinct a manner as possible." (Section 553(c)(2) and (3))

- afford an opportunity for oral presentations of data and information, sometimes including cross-examination, all of which must apparently be transcribed. (Section 553(d)(3) and (f)(1)(D))

- make extra determinations, descriptions, and explanations. (Section 553(e)(1), (2), and (3))

In our estimate, agency compliance with the economic analysis requirement for major rules in the Laxalt bill would simply cost more than it would be worth. The experience of such states as Florida and Illinois has shown that it is often better not to expect highly detailed and accurate economic information from agencies, especially when requirements for the production of economic information are first being implemented. We would suggest that the bill impose economic analysis requirements on federal agencies similar to those imposed on state agencies by the Illinois Administrative Procedure Act (see Sections 7.04(5)a and 5.01(b)).

It should also be noted that while the Laxalt bill does require a detailed cost-benefit analysis containing both quantifiable and non-quantifiable factors (proposed Section 553(c)(2) and (3)), an inadequacy in the statements these provisions require would be subject to only limited judicial review (see proposed Section 553(f)(3)(i)). It is our opinion that the production of more limited economic information could be required and that such a requirement could be more stringently enforced by the courts. We thus feel that the more limited requirements would be the most efficient means to the best possible information at the present time. It is, of course, to be hoped that as agencies become more skilled in the collection of economic data and projection of economic costs and benefits, more detailed statements and analyses may be required by law at some time in the future.

10. Proposed Section 553(c)(4) reads as follows:

> Any supplement to or modification or revision of the notice of proposed rule making that is significant shall be published by the agency in the Federal Register and shall contain the information required by this section.

This provision represents an important step toward the fulfillment of the goal of agency openness in the rule making process. However, this provision could be lessened to a requirement of publication of any change in a notice of proposed rule making that results from other than public input during the rule making process. It would be our suggestion that agencies be required to publish the notice of proposed rule making as supplemented, modified or revised, and allow at least sixty additional days for public comment. This would require agencies to open to full public scrutiny changes in the provisions of the rule, or in the information on which the agency relies in the promulgation of the rule, which did not result from public comment. At the same time, it would not require agencies to needlessly repeat the rule making procedure to incorporate changes which resulted from public comment. Furthermore, it would not allow agencies to determine for themselves which changes are significant.

11. As stated above, proposed Section 553(d)(3) would require agencies to allow oral presentations during rule making proceedings for major rules. It would also require an opportunity for cross-examination "only (i) when requested by interested persons for the resolution of material issues of fact and (ii) when other available procedures for the resolution of material issues...are determined to be inadequate." Apparently, the drafters of the bill felt that this required opportunity for cross-examination amounted to overkill, because they included the following language: "No court shall hold unlawful or set aside an agency rule because of...(ii) failure by an agency to afford an opportunity for cross-examination pursuant to subsection (d)(2) of this section, unless the court finds upon review of a final rule, that such failure renders the rule unlawful under Section 706(a) (2)(A), (B), or(C) of this title." (proposed Section 553(f)(3)). (We are assuming that subsection (d)(3) was what the drafters intended because (d)(2) does not address the issue of cross-examination). In sum, the bill appears to us to contain several compromises between those favoring extensive, adversary rule making procedures and those favoring a quicker, less cumbersome procedure. In our view, the latter of these alternatives is preferable. We feel that it is unlikely that mechanisms such as cross-examination would add significantly to the value of the rule making proceedings, while it is very likely that they would add significantly to the cost of making rules (and defending rules attacked under 5 U.S.C. Section 706). Therefore, it is our opinion that even in the case of rules having monumental effects, an opportunity for oral presentation without cross-examination is sufficient.

12. Proposed Section 553(e)(3)(A) would set forth a requirement that all rules, "except for rules which grant or recognize an exemption or relieve a restriction," be published thirty days prior to their effective date. While we can see a need for this exception, we feel that in accordance with the important administrative law goal of public notice, even rules excepted by this provision should not be allowed to become effective until published in the Federal Register.

13. Final rules, according to the provisions of the Laxalt bill, would have to be published with a statement of their basis and purpose, which would include "a memorandum of law supporting the determination of the agency that the final rule is clearly within the authority delegated by law and consistent with congressional intent" (proposed Section 553(e)(3)(A)(iii)). While we feel it probable that the phrase "delegated by law" is intended to be synonymous with "delegated by statute," it is our experience that agencies will sometimes cite another source for rule making authority (for example, executive order, constitution or common law). Therefore, we suggest that the phrase "delegated by law" be clarified.

14. Proposed Section 553(e)(5)(B) allows agencies to rely on material not identified in the notice of proposed rulemaking if the material was "identified by the agency in the Federal Register or at a public rule making proceeding, was placed in the rule making file, and interested persons were given adequate notice to comment upon such material prior to the agency relying on it." Earlier provisions of the bill required a "description" rather than an identification of materials to be relied on; in that context, we suggested that a list of such materials, along with information facilitating public access to them, would suffice. Therefore, we would suggest a clarification of the term "identified" so that it would mean "listed" instead of "described."

15. Proposed Section 553(f)(1) provides that the promulgating agency must maintain a public rulemaking file, which file shall, when supplemented with material excluded from it under paragraph (2) of 553(f), constitute the rule making record for the purpose of judicial review. Paragraph (2) allows the exclusion of materials currently kept from public scrutiny by 5 U.S.C. Section 552(b). We feel that there might be a possibility that persons seeking such information might attack a rule (using 5 U.S.C. Section 706) merely to evade the provisions of Section 552(b), but our feeling is admittedly somewhat speculative.

16. Section 4 of the Laxalt bill would create new Section 560 in Title 5, U.S.C. This Section would require agencies to maintain an ongoing review of each of their major rules, each such rule to be reviewed once every ten years. As a part of this review, each agency would have to decide whether to amend, repeal, or renew its major rules.

In general, we feel that a periodic, on-going review of rules is an important means of ensuring that agency rules continue to fulfill the legislative intent behind the statutes which authorize them and that they continue to serve the best interests of the public. However, in our view the mechanisms the Laxalt bill employs to effect this review are not the most effective.

The problems we see with proposed Section 560 concern the schedules for review which agencies would be required to publish and the lack of any sanctions for non-compliance with proposed Section 560. The apparent reasons for setting out a ten-year review period are to open agency rules to a systematic and methodical agency reconsideration with public input, and to keep agencies from being burdened with a requirement for review at intervals too close together. The way the bill is written, however, there is nothing to prevent agencies from scheduling the review of all their rules for the tenth year and pushing the renewals and amendments through en masse at that time, making it more difficult for the affected public to comment on each individual rule. Also, in the bill's present form there is no mechanism for enforcing compliance with the agency's own schedule of review, or, for that matter, for enforcing compliance with any of the provisions of proposed Section 560.

In light of our experience, we feel that legislative oversight of the review of agency rules would be a more effective means of ensuring a meaningful review, and of keeping agencies on schedule. The legislative branch is in a unique position for this purpose; it does not have to wait for a lawsuit and treat matters on a case by case basis, as do the courts, and it would not be placed in the questionable position of having to critique and police itself, as would the executive branch. Furthermore, it only makes sense that the same body which delegated the authority for agency rules oversee the review of those rules to determine if they still further the legislative intent and public policy involved in the delegation.

17. Section 5 of the Laxalt bill would, as we read it, make two substantial changes in 5 U.S.C. Section 706. The first of these would be the addition of a new ground for judicial invalidation of agency action. Proposed Section 706 would allow courts to invalidate agency actions, findings and conclusions found to be

> without substantial support in the rulemaking file, viewed as a whole, for the asserted necessary factual basis, as distinguished from the policy or legal basis, of a rule adopted in a proceeding subject to Section 553 of this title. (Proposed Section 706(a)(2)(F))

It is unclear to us whether the phrase "without substantial support in the rulemaking file" has a meaning similar to the phrase "unsupported by substantial evidence in a case subject to sections 556 and 557 of this title...," which is found in current Section 706(2)(E). The latter phrase has been construed in numerous cases, and has developed a relatively well established meaning over the years. We would suggest that the bill make clear whether the newly created standard means the same thing as the current standard for review.

18. The second substantial change the Laxalt bill seeks to make in current Section 706 is the addition of the following language:

> In making determinations under clause (2)(C) of subsection (a) of this section, the court shall hold unlawful and set aside action by the agency that is shown not to be within the scope of agency jurisdiction or authority on the basis of the language of the statute or, in the event of ambuiguity, other evidence of legislative intent. In making determinations on other questions of law, the court shall not accord any presumption in favor of or against agency action. (Proposed Section 706(c))

We interpret this language to strip from all agency action the presumption of validity traditionally accorded by the courts, except in cases in which agency action

is attacked as being outside an agency's statutory authority. We are certainly in favor of subjecting agency rules to stricter judicial scrutiny, but we do not feel that the exception for statutory authority challenges is warranted. Especially in a system such as that proposed by this bill, which does not provide a mechanism for congressional oversight of rulemaking, it is essential that the courts be given an unfettered hand to keep agencies within the statutory limits of their power.

If it is felt that the presumption of validity should be preserved for agency action attacked as being unauthorized by statute, there might still be ways in which the presumption could be suspended in appropriate situations. In Iowa, a legislative objection to an agency rule reverses the presumption of validity and shifts the burden of persuasion to the party or parties defending the rule from a legal attack on its validity. Perhaps a system such as this could be developed at the federal level.

In sum, we feel that proposed Section 706(c) is an important and necessary change in present law, but that it does not go far enough. Whether through some form of legislative oversight or a blanket elimination of the presumption of validity, we feel that rules should be subject to strict scrutiny to determine if they are within statutory authority.

19. Section 6 of the Laxalt bill, which would amend 28 U.S.C. Section 2112, would appear to be helpful in eliminating duplicative litigation.

20. Section 7 of the Laxalt bill would add Section 561 to Title 5 of the United States Code. Agencies would be required by this section to publish at six-month intervals an agenda of all rulemaking action planned for the following twelve months. The agenda would be required to contain a number of useful facts concerning the rules affected, which we see as facilitating informed public comment and thus as an improvement in present law. We are troubled, however, with subsection (c) of proposed Section 561, which allows agencies to promulgate rules not listed on the agenda if certain conditions are met. In our opinion, this provision robs the section of much of its effectiveness and usefulness. While there are certainly emergency situations in which agencies would be justified in avoiding the agenda requirements, we feel that absent a bona fide emergency, agencies should be required to comply

with the provisions of this subsection as a condition of undertaking rulemaking procedures. We know of no other way this section can be truly effective.

Technical

The remainder of these comments address possible technical difficulties with the bill. Because we are working from a preliminary draft of the bill, and not the one which was introduced in the Senate, the defects cited may already have been corrected.

1. Section 3 of the bill states at the beginning that it amends 5 U.S.C. Section 553 by redesignating subsection (e) as (g), and by amending subsections (a) through (d). Although it adds new subsections (e) and (f), there is no enacting language for these additions. We suggest that the first sentence of Section 3 of the bill be changed accordingly.

2. Proposed Section 553(d)(1) requires agencies to give interested persons at least sixty days to "participate in the rulemaking...." Proposed Section 553(d)(2)(B) refers to this sixty-day period for "participation in the rulemaking." We suggest that the phrases "participate in" and "participation in" be changed to "comment on," to more accurately reflect the true nature of the rulemaking process and to avoid confusion.

3. The word "written" is misspelled in proposed Section 553(d)(3)(ii).

4. The last line of proposed Section 553 (e)(4) contains the phrase "expended by for such promulgation," a phrase which appears to contain either one word too many or several words too few.

5. Proposed Section 553(f)(1) provides that the rulemaking file, and the material excluded from it in accordance with proposed subsection (2), "shall constitute the rulemaking record for purposes of judicial review." Proposed Section 706(a) would allow courts to invalidate agency action found to be "without substantial support in the rulemaking file," but makes no mention of material excluded from the file. We suggest that these two provisions be harmonized.

6. Proposed Section 553(f)(3)(ii) should probably cite "subsection (d)(3) of this section" instead of (d)(2).

7. In Section 4 of the Laxalt bill, proposed Section 560(f)(1) contains misspellings of the words "total" and "extension"; in (f)(2), "concurrence" is misspelled. Also, the close quote marks have been omitted at the end of proposed subsection (g).

8. Section 7(b) of the bill is preceded by unnecessary quotation marks.

BUMPERS BILL (S.67)

Substantive

1. Present Sec. 553(a)(1) exempts matters relating to agency management or personnel, loans, grants, or benefits. S-67 retains this exemption except to the extent that notice and hearing are required by statute. As does present law, proposed subsection (a)(1) also exempts rules of agency organization when notice and hearing are not required by statute (though they would be exempt from operation of the entire section under S-67 rather than from subsection (b) as under present law). The proposed subsection (a)(1)(B) does not represent a substantial change from existing law. Such a change is in order. The present provision is used to avoid the rulemaking process in matters relating to loans and grant programs. Preferable is the parallel language of the Laxalt bill which would amend Section 553 to provide, "This section does not apply, except when notice or hearing is otherwise required by statute, to any. . . rule relating exclusively to internal personnel rules and personnel practices of an agency." This language clearly indicates the intent to provide an exemption for internal personnel matters only.

2. Proposed Sec. 553 (a)(1)(C) also retains the present exemption of matters relating to public property and contracts. The proposed language does add to the requirement that the agency "comply with any rule or directive relating to such matters issued by the Office of Federal Procurement Policy, the General Services Administration, or any other agency pursuant to statute." This qualification is an improvement. We suggest, however, that the Laxalt approach be adopted and clause (C) be eliminated. The exemption in favor of public property and contracts could leave too wide a gap in the coverage of the rulemaking requirements.

3. Clause (D) of the proposed Sec. 553(a)(1) would preserve the exception contained in present Sec. 553(b) which provides that Sec. 553 does not apply when notice and

hearing are not required by statute and the agency for good cause finds that notice and public procedure on the rule are impracticable, unnecessary, or contrary to the public interest. We feel that this provision would allow too much rulemaking to be done without notice and public comment, violating the spirit and purpose of the APA. It is our opinion that this exception should be eliminated.

If it is decided that this exception should be kept, we would suggest that the phrase "for good cause" be deleted from the clause; it adds little to the meaning of that provision, and has the potential for generating much confusion and litigation. If the exception is eliminated, an additional provision allowing for emergency rulemaking should be adopted. Such a provision is found in the Laxalt bill. An emergency rulemaking provision would allow the agency to temporarily avoid the rulemaking process in matters of sudden urgency. The Laxalt provision on emergency rulemaking is a step in the right direction but is deficient in a few respects. In addition to requiring publication of the emergency rule, such a provision should clearly state requirements regarding the effective date and its publication.

Elimination of the exception for rules on matters for which the agency finds notice and public procedure are impracticable, unnecessary, or contrary to the public interest would also require elimination of paragraph (a)(2) which requires the agency to publish such a finding and the reasons therefor.

4. Section 553(b) presently provides that, except where notice or hearing is required by statute, subsection (b) does not apply to interpretive rules or general statements of policy. The bill provides in proposed Sec. 553(a)(1)(E) that when such rules and statements have general applicability and would have a substantial impact on persons outside the agency, the agency must, after issuance of the rule or statement, follow the normal rulemaking procedures upon petition of any affected person. Inasmuch as the Bumpers proposal clarifies the law and limits what agencies may do without notice and hearing, it is at least a step in the right direction. However, in our opinion it still allows too much agency action without public notice and public input; clause (E) should be eliminated altogether.

One problem with the Bumpers proposal is its use of the term "issuance." Upon petition of any affected person the agency must, after issuance of the rule or statement, follow the normal rulemaking procedure. Nothing in clause (E) indicates

how the rule or statement is issued or how affected persons are expected to become aware of the rule or statment. A notice of adoption and the full text of the rule should be published in the Federal Register on or before the effective date of the rule. The provision should also incorporate a time limit measured from the date of publication within which time affected persons must petition the agency for rulemaking.

The proposed clause (E) also leaves unclear the effect of the filing of a petition by an affected person on the legal effectiveness of the rule. We assume that upon the filing of the petition the rule must be withdrawn and is no longer enforceable and that the agency must comply with the notice and hearing requirements before the rule can be applied. Clause (E) should be clarified in this regard.

Another problem in this area concerns the adoption of conflicting policy statements and interpretations by different regions of the same agency. In our view, this problem might be ameliorated by a requirement that all general policy statements and interpretative rules be subject to general notice and hearing provisions and thus, that they be promulgated through the central agency office.

Again, we prefer that no exception from the rulemaking requirements of Sec. 553 be granted for interpretive rules or general statements of policy. However, if some exception must be included and the concerns expressed above are met, the Bumpers proposal would be an adequate compromise position and is preferable to the Laxalt version.

5. S-67 would maintain the present notice requirement of Sec. 553(B) by providing that "the notice shall include - (1) the terms or substance of the proposed rule or a description of the subjects and issues involved...." In light of our experience in Illinois, we suggest that proposed subsection (c)(1) contain requirements that rules which amend already existing rules indicate proposed changes in existing language and that repealers contain the full text of the repealed rule.

6. Proposed subsection (b) would also add to the information required to be published in a notice of proposed rulemaking. Clause (5) would require the notice to include "a description of any methodology used in obtaining and analyzing the data," and clause (6) would include "an identification of the reports, documents, studies or other

information from which the factual data were derived." The detailed description of methodology is not an essential element of the notice of proposed rulemaking. We would much prefer to have the notice include the full text of the proposed rule if it came to a choice between them. The notice could inform interested persons where information regarding the methodology could be obtained. The language of clause (6) is preferable to the parallel provision in the Laxalt bill as it seems to require a list of documents, studies, and reports rather than a description of all information to be relied on. We suggest that clause (6) would be improved if it required the notice to state where copies of the information may be obtained.

7. As does present Sec. 553, the last sentence of Bumpers' proposed Sec. 553(b) provides that subsection (b) shall not apply to rules of agency practice or procedure. There is no reason this exception from the rulemaking requirements couldn't be incorporated into subsection (a) dealing with applicability. The Laxalt bill contains all such exceptions in a single subsection and is preferable in that regard.

8. Proposed subsection (c) of Sec. 553 provides in paragraph (1) that the agency must provide interested persons an opportunity to submit written and oral comments and data. It is not clear from the rule how great an opportunity interested persons would have. Some minimal period of time within which interested persons may be required to submit comments and information should be prescribed. The Laxalt bill, for example, provides in proposed Sec. 553(d)(1) that the agency shall allow interested persons not less than sixty days to submit comments and information. The Laxalt provision is preferable in this regard.

9. Proposed paragraph (c)(1) requires an agency to "provide interested persons an opportunity for oral presentation of data, views, and arguments." The provision appears to require a public hearing for each rulemaking initiated by the agency - a potentially wasteful requirement. The Illinois Joint Committee has introduced Senate Bill 514 in the current session of the General Assembly. Passage of that bill as amended by Senate amendment No. 1 would require agencies to hold public hearings on proposed rules when requested to do so by 25 pesons, by an association representing at least 100 persons, by the governor, by a unit of local government, or by the Joint Committee itself. This type of provision balances complete agency discretion regarding oral comments and mandated public hearings in every case. The interested public would decide when a hearing is necessary, and hearings would be reserved for situations in which they would be more productive.

10. Proposed paragraph (c)(1) would require the record of a rulemaking proceeding to "be kept open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary comments." This provision is a good compromise between Sec. 553 which allows opportunity solely for submission of materials and Sec. 556(d) which allows a party "to conduct such cross-examination as may be required for full and true disclosure of the facts." It is hard to tell when cross-examination is required for full and true disclosure until after the examination. The agency probably would be forced to allow more time consuming cross-examination than is really necessary just to protect itself. If, after submission of information and rebuttal, the agency cannot reconcile conflicting information, cross-examination could be still used under proposed paragraph (c)(2) in order to better determine the reliability and validity of information presented.

11. Proposed paragraph (c)(2) would allow agencies to use such additional rulemaking procedures as it determines are appropriate based on certain factors. This is a reasonable provision.

12. Proposed Sec. 553(d)(2) would provide:

> (2) If an agency expects, in its statement of basis and purpose for a final rule, to rely on written data or factual matter which is developed during the course of the rulemaking, which was not previously available for public comment, and which is likely to affect the outcome of the rulemaking, the agency shall permit the public a reasonable opportunity to comment thereon.

We believe that the key distinction in changes in the information relied on or in changes of text in reliance on new information is whether or not the information is developed through the public comment process. If, in its notice of adopted rule, the agency relies on information which is developed or obtained outside the public comment process and which was not listed in the notice of proposed rulemaking, the agency should be required to publish a notice listing the new information and where it could be obtained. The notice should also inform the public that there will be an additional period in which to submit information and comment in response to the

new information. Similarly, changes made from the proposed terms and substance of a rule or proposed text of a rule should also require additional notice and comment when the changes are not made in response to information, views, and arguments gathered in response to the notice of proposed rulemaking. Simply put, when the final notice reflects changes in the text of the rule or the information relied on and the changes are not made in response to public comment, the agency should be required to publish notice of the changes, of the method of obtaining additional information, and of an additional comment period. Paragraph (2) is not broad enough in that it does not require additional notice and comment for changes in text made other than in response to public comment.

On the other hand, paragraph (2) seems overly broad in that it could be interpreted to require notice and an additional comment period in some circumstances when information likely to affect the outcome of the rulemaking is developed during the rulemaking. Our position is that no further opportunity for comment is necessary when the agency relies on information developed by the public through the rulemaking process. An agency should be accorded some leeway to consider and rely on information submitted by the public without further prolongation of the proceedings.

13. Proposed paragraph (d)(3) would require publication of a rule at least thirty days before its effective date except in the cases of

(1) a rule which grants or recognizes an exemption or relieves a restriction;
(2) interpretive rules and statements of policy;
(3) as otherwise provided by the agency for good cause found and published with the rule; or
(4) where a longer period of time is required by law.

We recommend that clauses (2), (3), and (4) be eliminated. Interpretive rules and statements of policy should be subject to the same rulemaking requirements as other rules. The need for a good cause exception from the prior publication requirement could be fulfilled in cases of sudden urgency by an emergency rulemaking provision such as that discussed earlier. Clause (4) is probably not necessary. The suggested approach is the one taken in Laxalt's proposed Sec. 553(e)(3)(A). Even rules which grant or recognize an exemption or relieve a restriction should not be allowed to be effective until the public has had notice by publication in the Federal Register.

14. Bumpers' proposed Sec. 553(e)(1) would require an agency to establish a public file in each rulemaking proceeding and prescribes the contents of such a file. The Bumpers version would include in the file substantially the same information as a similar provision in the Laxalt bill with the exception of the transcript of oral proceedings. Since the agency would be required to keep a transcript of any oral presentations under proposed section (c)(1), it could be argued that the transcript would need to be included in the file by virtue of clause (F) which applies to "any statement, description, or analysis required to be prepared by the agency in formulating the rule." However, it would be simpler to list the transcript as one of the items required just as the Laxalt bill does.

15. Present subsection (e) of Sec. 553 will be relettered but not changed by the Bumpers bill. It provides that agencies shall give interested persons the right to petition for action on a rule. We wholeheartedly support the right of persons to petition regarding rules; a similar provision is found in Illinois law. Section 8 of the Illinois Administrative Procedure Act goes a little further. We suggest that the adoption of similar federal language be considered.

16. Bumpers' proposed Sec. 555 allows agencies to use expedited hearing proceedings in certain cases. Paragraph (a)(1) provides that "an agency may, in its discretion, apply this section to any agency proceeding subject to section 554 of this title...including...rulemaking...." We are not sure how an agency would be able to apply the procedures of Sec. 555 to a rulemaking since rulemakings would not appear to be proceedings subject to Sec. 554. With certain exceptions, Section 554 applies, according to its own terms, "in every case of adjudication required by statute to be determined on the record after opportunity for agency hearing." According to Section 551(7), an "adjudication" is the agency process for formulation of an order. "Order" is defined in Section 551(6) as a final disposition in a matter other than rulemaking. Thus, agencies would be able to apply Section 555 to agency procedures for formulation of final dispositions in matters other than rulemaking including rulemaking. We believe clarification is in order.

We realize that after NLRB v. Wyman - Gordon Co., 394 U.S. 759 (1969), there may be some dispute as to whether an agency may adopt a rule of propsective application in an adjudication. While technically it appears agencies may not do so, it may be that a reference to rulemaking was included in Section 555 just to cover the

possibility of rulemaking in adjudications. We believe it would be preferable for Congress to require compliance with the rulemaking requirements of Section 553 when an agency promulgates a rule of prospective effect in an adjudication.

17. Proposed Section 706 would allow courts to invalidate agency actions, findings and conclusions found to be

> without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis of a rule adopted in a proceeding subject to Section 553 of this title. (Proposed Section 706(a)(2)(F))

It is unclear to us whether the phrase "without substantial support in the rulemaking file" has a meaning similar to the phrase "unsupported by substantial evidence in a case subject to section 556 and 557 of this title...," which is found in current Section 706(2)(E). The latter phrase has been construed in numerous cases, and has developed a relatively well established meaning over the years. We would suggest that the bill make clear whether the newly created standard means the same thing as the current standard for review which is quoted above.

Technical

1. Proposed Sec. 553(a)(1) contains the phrase "notice and hearing is not required." We suggest substitution of the verb "are" for "is".

2. The same problem occurs in Sec. 553(a)(1)(D) which contains the phrase "notice and public procedure is impracticable,...."

3. Section 553(e)(1) refers to "paragraph (2) of this subsection." No paragraph (2) appears in our copy of section 553(e).

S.344

Substantive

1. Section 3(a) requires each agency to prepare an agenda of significant rules it intends to propose in the following twelve months, but provides that failure to list an area of possible rulemaking will not preclude an agency from proposing or issuing any rule. While we feel the agenda requirement is a valuable step toward increasing agency responsibility in rule making, it appears that this provision is robbed of its usefulness by the lack of any sanction for failure to comply. Certainly, special and unforseeable circumstances sometimes arise which necessitate immediate agency action; rules brought about by these situations may be excepted from the provisions of Section 3(a) as "emergency rules." This could be accomplished by a provision similar to proposed 5 U.S.C. Section 553(b) of Senator Laxalt's bill.

2. Section 3(b) requires agencies to transmit copies of proposed or final significant rules to the appropriate Congressional committees the same day the rules are forwarded to the Federal Register. Section 4(a) provides that "no significant rule may become effective until the expiration of twenty days after the date on which the rule is received by the appropriate committees." It is unclear whether the committees are to receive two twenty-day periods to consider rules (one for proposed and one for final rules). We suggest that these provisions be clarified, preferably by inserting the word "final" between "the" and "rule" in the above quoted language (line 13 of page 3 of the bill).

3. Sections 4(a)(1) and 4(a)(3) each contain the phrase "that during such time a joint resolution disapproving such rule has not been enacted into law." We find this language troublesome; it is not entirely clear to us what the phrase "enacted into law" means. If it means that the joint resolution must have been passed by both houses and either approved by the President or passed over his veto, we question whether enough time is given for this action. We would opt for a construction of the phrase "enacted into law" to mean "passed by both houses of Congress," and in any event would suggest that the phrase be clarified.

4. We believe that there are several other ways in which Section 4 should be clarified and simplified. First, there are twenty-day, thirty-day and sixty-day periods to be reckoned with in subsection (a), along with the provisions of subsection (c), which set

out how these time periods are to be calculated. Unless it is felt that each of these provisions concerning times for action is essential, we would suggest a uniform time period for Congressional consideration of rules - one which would balance the interest of the agencies in adopting rules without undue delay and the need by Congress to have sufficient time for meaningful and deliberate action.

A second possible problem with Section 4 is that it is unclear what portion of a rule a joint resolution of disapproval would prevent from becoming effective. Agencies often promulgate hundreds of pages of rules at once; if a joint resolution of disapproval directed at one small segment of one of these could prevent a large block of rules from becoming effective, we feel that this would be an inefficient and unnecessary result. In this light please consider Section 7.06a of the Illinois Administrative Procedure Act, which permits a legislative veto of "a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer."

A third possible problem with Section 4 is that it leaves a number of questions unanswered. For example: (1) Is an agency determination of the significance or insignificance of a rule conclusive on Congress? (2) If an agency does not transmit a rule to the appropriate committee, may Congress still consider it? (3) Can Congress enact a joint resolution of disapproval outside the time frames provided, as long as the rule is not yet by its terms effective?

5. It is difficult to comment on Section 5 of the bill, which concerns waiver of Sections 3 and 4 in certain cases, because the bill is completely silent as to who makes this waiver, and by what procedure. If the decision as to whether to waive is forced upon the chairman or the chairman and ranking minority member of each appropriate committee, we feel that this is too heavy a burden.

As stated earlier, we are aware that there are emergency situations in which usual rule making (and in this case, rule reviewing) procedures would be contrary to the public interest. It is our opinion, however, that exemptions created for such situations should not be broad enough to allow non-emergency rules to be adopted without the ordinarily required safeguards. We feel that if Section 5 is to contain an exception, this exception should be limited to emergency rules as defined in Senator Laxalt's bill.

6. The second sentence of Section 6 reads as follows:

> The compliance of any agency with the provisions of this Act, including any determination by an agency under this Act, shall not be subject to judicial review of any kind.

This provision would appear to eviscerate the entire "Agency Accountability Act of 1981," although reviewing courts might either find it unconstitutional or be able to construe their way around it when it is found appropriate to do so.

7. Section 7(b) defines the term "appropriate committee," as the committee in either chamber "which has primary jurisdiction over the statute pursuant to which the agency may issue a particular rule." This definition may not be sufficient; in our experience, agencies may sometimes promulgate rules under authority conferred by sources other than statute, such as executive order or constitutional law. A procedure would have to be developed for determining which committee is the appropriate one in such circumstances.

8. Section 7(c) defines "rule" and excepts ratemaking from this definition. This exception would not appear to be necessary if any of several pending bills excepting ratemaking from procedures required by 5 U.S.C. Section 533 are passed.

9. "Significant rule" is defined in Section 7(d), as a rule an agency determines to be significant. Agencies are required to consider a number of things in making that determination, but are given no standards through which they can ultimately make the judgment. We are not in favor of giving agencies unfettered discretion to determine what rules are "significant"; there is plenty of room for honest disagreement in many cases, and in others a provision such as this might purposely be used to shield a rule from Congressional scrutiny for one reason or another.

Technical

1. It is our opinion that S.344, if enacted, should be codified as part of the Administrative Procedure Act in Title 5 of the United States Code, and that its provisions and definitions should be harmonized with that statute.

2. In Section 2(a)(4), the word "conflicting" is misspelled.

3. Section 3(b) provides that agencies must "transmit" a copy of each significant rule to the appropriate committees on the same day they "forward" the rule to the Federal Register for publication. We suggest that the method of "transmittal" be more clearly spelled out to eliminate possible agency evasion of this provision, whether negligently or intentionally.

4. In Section 5(2), the word "chairman" should probably be changed to "chairmen".

5. Section 9 provides that the bill, if enacted, would become effective at the beginning of the first session of the Ninety-seventh Congress. Should this read "Ninety-eighth"?

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(ILLINOIS REVISED STATUTES, CHAPTER 127, PARAGRAPHS 1001-1021)

Section 1. SHORT TITLE) This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." **(PA 79-1083, effective September 22, 1975)**

Section 2. APPLICABILITY) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, (3) legal opinions issued under Section 2-3.7 of The School Code, and (4) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures and (5) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act." **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981)**

Section 3. DEFINITIONS) As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.09 have the meanings ascribed to them in those Sections. **(PA 79-1083)**

Section 3.01. AGENCY) "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

(a) the House of Representatives and Senate, and their respective standing and service committees;

(b) the Governor; and

(c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. **(PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)**

Section 3.02. CONTESTED CASE) "Contested case" means an adjudicatory proceeding, not including rate-making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

Section 3.03. HEARING EXAMINER) "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. **(PA 79-1083)**

Section 3.04. LICENSE) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. **(PA 79-1083)**

Section 3.05. LICENSING) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. **(PA 79-1083)**

Section 3.06. PARTY) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. **(PA 79-1083)**

Section 3.07. PERSON) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. **(PA 79-1083)**

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES) "Rate-making" or "rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. **(PA 79-1083)**

Section 3.09. RULE) "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standarized forms. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES) (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)**

Section 4.01. REQUIRED RULES) (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rule-making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 4.02. STANDARDS FOR DISCRETION) Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. **(Added by PA 80-1129, Effective July 1, 1980)**

Section 5. PROCEDURE FOR RULE-MAKING) (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 5.01. GENERAL RULEMAKING) In all rulemaking to which Section 5.02 or 5.03 does not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include a text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed; the specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized; a complete description of the subjects and issues involved; and the time, place and manner in which interested persons may present their views and comments concerning the intended action.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

(b) provide up to 45 days additional notice of its intended action to the Joint Committee on Administrative Rules. The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include the text and location of any changes made to the proposed rule during the first notice period, and, if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, shall include an analysis of the economic and budgetary effects of the proposed rule. After commencement of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Joint Committee.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule. **(Added by PA 81-1044, effective October 1, 1979)**

Section 5.02 EMERGENCY RULEMAKING) "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefore shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having subtantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. **(Added by PA 81-1044, effective October 1, 1979)**

Section 5.03. PEREMPTORY RULEMAKING) "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and reguations, or court order, as stated in the relevant federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. **(Added by PA 81-1044, effective October 1, 1979)**

Section 6. FILING OF RULES) (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it, including all rules existing on the date this Act becomes applicable to the agency other than rules already so filed. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any material pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of rulemaking which presents:

1. if the material is a new rule, the full text of the new rule; or
2. if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or
3. if the material is a repealer, such notice of repeal shall be published. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 6.01. FORM AND PUBLICATION OF NOTICES) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

Notwithstanding any other provision of this Act, if an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed shall

be satisfied by filing with the applicable notice a photographic or other reproduction of such rules, or a statement that the agency proposes to adopt or is adopting such rules with a citation to the Federal Register or Code of Federal Regulations where the text appears. If an agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text thereof be filed shall be satisfied by filing with the applicable notice a photographic or other reproduction of such standards or guidelines. **(Added by PA 81-1044, effective October 1, 1979)**

Section 7. PUBLICATION OF RULES) (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of the rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommenations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01(a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if

such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code on or before January 1, 1985, and shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980)**

Section 7.01. CERTIFICATION) (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. **(Added by PA 80-1035, effective September 27, 1977)**

Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES) (a) The Joint Committee on Administrative Rules is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of same political party. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979)**

Section 7.03. OATHS; AFFIDAVITS; SUBPOENA) (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpeona and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. **(Added by PA 80-1035, effective September 27, 1977)**

Section 7.04. POWERS OF JOINT COMMITTEE) The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)**

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE) The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule-making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule-making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule-making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 7.06. JOINT COMMITTEE OBJECTION TO PROPOSED RULE-MAKING) (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after notice of proposed rulemaking has been received by the Joint Committee, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 7.06a. LEGISLATIVE VETO OF PROPOSED RULEMAKING) (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. **(Added by PA 81-1514, effective January 1, 1981)**

Section 7.07. JOINT COMMITTEE OBJECTION TO EXISTING RULE) (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:
1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

Section 7.07a. LEGISLATIVE SUSPENSION OF EMERGENCY AND PEREMPTORY RULES) (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this

subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. **(Added by PA 81-1514, effective January 1, 1981)**

Section 7.08. PERIODIC EVALUATION BY JOINT COMMITTEE) (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rule-making;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. **(Added by 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)**

Section 7.09. JOINT COMMITTEE RULE-MAKING) The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. **(Added by PA 80-1035, effective September 27, 1977)**

Section 7.10. REPORT BY JOINT COMMITTEE) The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1 of each year. **(Added by PA 80-1035, effective September 27, 1977)**

Section 8. PETITION FOR ADOPTION OF RULES) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. **(PA 79-1083)**

Section 9. DECLARATORY RULINGS BY AGENCY) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory rulings shall not be appealable. **(PA 79-1083)**

Section 10. CONTESTED CASES; NOTICE; HEARING) (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. **(PA 79-1083)**

Section 11. RECORD IN CONTESTED CASES) (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communciation prohibited by Section 14 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. **(PA 79-1083)**

Section 12. RULES OF EVIDENCE; OFFICIAL NOTICE) In contested cases:

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. **(PA 79-1083)**

Section 13. PROPOSAL FOR DECISION) Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. **(PA 79-1083)**

Section 14. DECISIONS AND ORDERS) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, spearately stated. Finding of fact, if set forth in statutory langauge, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

Section 15. EX PARTE CONSULTATIONS) Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a

contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

Section 16. LICENSES) (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requiremnts for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

Section 17. RATE-MAKING) Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. **(PA 79-1083)**

Section 18. WAIVER) Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. **(PA 79-1083)**

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. **(PA 79-1083)**

Section 21. EFFECTIVE DATE) This Act takes effect upon its becoming a law. **(PA 79-1083, effective September 22, 1975)**

JOINT COMMITTEE ON ADMINISTRATIVE RULES,
ILLINOIS GENERAL ASSEMBLY,
Springfield, Ill., September 14, 1981.

Hon. CHARLES H. PERCY,
Committee on Governmental Affairs, Subcommittee on Energy, Nuclear Proliferation and Government Process, U.S. Senate, Washington, D.C.

(Attention: Lynn M. Lerish)

DEAR CHUCK: I am enclosing the edited transcript of my testimony presented at your Peoria hearing on Federal Regulation. Also enclosed are brief answers to the two additional questions you asked me to respond to. I understand that these additional questions and answers will be made part of the hearing record.

Federal regulatory reform is important to you and to us. It holds a great potential for correcting the current imbalances in the Federal-State relationship as well as in the legislative-administrative relationship. I hope your subcommittee's hearing and report will help these efforts reach their full potential for improving government's current regulatory procedures.

I am looking forward to seeing your final report and recommendations. If I can provide any assistance in your summary hearings which I understand are being scheduled for late October or early November, please let me know. I hope my contributions have been useful and I am certainly willing to provide any additional help that you may find necessary. I remain

Yours faithfully,

SENATOR PRESCOTT E. BLOOM,
Chairman.

RESPONSES OF MR. BLOOM TO WRITTEN QUESTIONS SUBMITTED BY SENATOR PERCY

Question 1. Senator Bloom, I am very interested in the workings of the Joint Committee on Administrative Rules. I would like to hear your comments about how well this might work at the federal level—for example, how we might coordinate such a committee with the regulatory reform work done by the authorizing committees, as well as the Vice President's Task Force and the Office of Management and Budget?

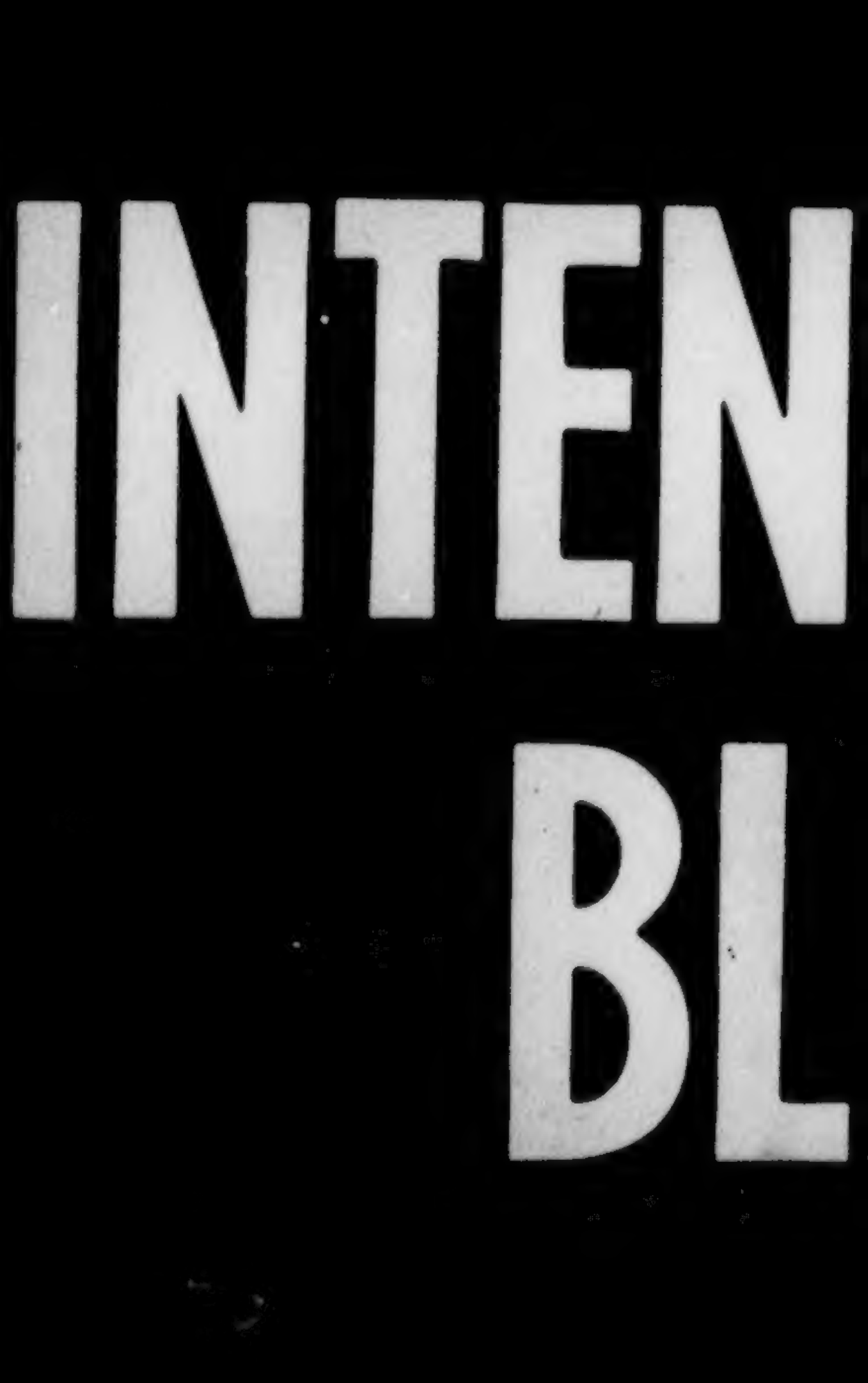
Answer. One of the more startling developments in the realm of federal and state government in recent years has been the unprecedented growth of the bureaucracy. Often referred to as the "fourth branch" of government, this unwieldly group has become a symbol of government excess, and has helped demonstrate the need for more strict legislative controls and oversight.

I firmly believe that the type of oversight provided by the Joint Committee on Administrative Rules could be adapted to meet the needs of the federal governmental structure and could help provide much-needed reforms in the federal regulatory process.

The mechanics of our rule review program are really very simple. The Committee staff is divided into two sections. One section reviews newly proposed rules in terms of their compliance with statutory authority, propriety, legal adequacy, and similar issues. The other section conducts a comprehensive review of all existing agency rules. Existing rules are classified and scheduled so that all agency rules are reviewed at least once every five years. This provides continuity and helps weed out unnecessary or outdated rules. The staff then makes its recommendations to the Committee, and the rules are dealt with accordingly.

Adapting and implementing a similar program at the federal level would be a difficult task, but I believe that the advantages of such a program would far outweigh any problems that might be encountered. In the legislature, the substantive committees already have an almost overwhelming workload, and the situation is likely to get worse before it gets better. Agencies continue to churn out regulations at an almost unbelievable rate, and the committees simply do not have the time and resources available to ensure that each regulation conforms with their intent. A joint committee designed specifically to oversee and review agency regulations would help ease the tremendous burden placed on the other substantive committees and would ensure that the regulations met with the approval of at least a representative group of the full legislative body.

A federal review program would also complement the work of the Vice President's Task Force and the Office of Management and Budget. Once the committee was in place, it could begin identifying problem areas in the rulemaking process, and could make recommendations for changes or improvements to help solve those problems. In addition, the Committee could help monitor the agencies' progress in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meeting requirements such as regulatory flexibility, and could report on that progress to Congress. An atmosphere of cooperation rather than competition with executive supervisory units could be developed.

As you can see, there are a number of advantages to establishing a rule review program at the federal level. Granted, there would be some problems initially, but I believe those could be worked out with a little effort. The bottom line is that regulatory reforms are sorely needed at the federal level, and developing a federal counterpart to the Joint Committee on Administrative Rules is one way to begin achieving those reforms.

Question 2. I would like to ask you the same question about the State Mandates Act. How well do you think this concept would work at the federal level—for example, if the federal government were to reimburse states for their costs in implementing our regulations?

Answer. The spirit of the State Mandates Act is one of self-limitation and reciprocity. Realistically, local governments cannot be expected to comply with state mandated programs and regulations without some form of subsidy or reimbursement from the state. For that reason, particularly in times of decreasing revenue and fiscal frugality, the state must learn self-restraint and must carefully examine the programs that call for local government expenditures.

The same should be true of federal mandates that are issued to the states. A Federal Mandates Act would prompt a more careful evaluation of the need for various state programs, and it would help ensure that the programs already developed were running as efficiently as possible. The built-in self-limitation factor of a Federal Mandates Act could help lessen the fiscal and administrative burdens currently being carried by the states, and it could lead to vast improvements in Federal-State relationships.

A good example of how a Federal Mandates Act could lessen state fiscal burdens and prompt a closer look at the cost versus benefits of an agency mandate can be found in the list of federal regulations targeted for review by the Vice-President's Regulatory Relief Task Force. In the Department of Transportation's rules governing access to the handicapped, "local governmental entities receiving federal financial assista ce for mass transit purposes must assume extensive handicap accessibility obligation." These obligations include renovation of subway stations, new buses with ramps or lifts for wheelchairs, and many others. "New York City alone estimates the capital costs at between $1.1 billion and $1.2 billion, with annual operating costs at between $68 million and $140 million." A Federal Mandates Act requiring reimbursement to the states for implementing the regulations might have prompted more serious consideration of other more cost-effective alternatives to this rule.

The State Mandates Act is still being watched closely by political observers in Illinois and other states which have adopted similar laws, but I am confident that the experiment will be successful. I am equally confident that a Federal Mandates Act could achieve the same kind of success.

PREPARED STATEMENT OF JOHN W. CASTLE

I am John W. Castle, director of the Illinois Department of Commerce and Community Affairs. The department is the state's comprehensive economic and community development agency and is charged to assist business, units of local government, and other appropriate constituencies with the full development of their resources for the benefit of the entire state. The subject of this hearing, business regulations, is necessarily of great interest to the department and the business community it serves.

Compliance with government regulations are costly to every business, and such costs ultimately are passed on to the American consumer with higher prices. Similarly, all taxpayers pay the cost of funding the various government regulatory agencies. Consequently, keeping government business regulations to the absolutely necessary minimum is in the best economic interest of all Americans.

We are all aware of the direct costs of regulations; the actual costs added to the price of a product or service resulting from a governmentally imposed requirement. These higher prices represent a hidden tax imposed on the public by government regulation. For example, there was approximately $666 in government-mandated safety and environment control equipment in the typical 1978 passenger automobile. For the 10 million cars sold that

year, that amounted to $6.7 billion in higher automobile prices paid by the American consumer. $6.7 billion is over one-half of Governor Thompson's recommended budget for the entire State of Illinois in fiscal year 1980.

The operating budgets of the federal regulatory agencies, prior to the current administration, had increased dramatically. The $4.8 billion budgeted to run the various federal regulatory agencies in fiscal 1979 represented a 115 percent expansion of the $2.2 billion budgeted in fiscal 1974. Government regulation of business has literally become a major growth area of the American economy.

The direct costs to business of government regulations are enormous, but there are also indirect costs to be considered. Indirect costs are those costs necessary to change a company's way of doing business in order to comply with federal government directives. Every firm in the country must face a growing paperwork burden imposed on it by the expensive and time-consuming process of submitting reports, making applications, filling out questionnaires, replying to orders and directives, and preparing court appeals resulting from some of the regulatory hearings. There are over 4,400 different types of federally approved forms, in addition to tax and banking forms. Individuals and business firms spend over 143 million man-hours a year filling out these forms. The 71,500 man-years involved is the equivalent of a small army or the total employment of a company such as the General Dynamics Corporation.

The rising paperwork and ancillary requirements of government regulatory agencies inevitably produce a lengthening "regulatory delay"; a delay

that often runs into years and is a costly drain on the time and budgets of private managers as well as public officials.

For example, the Federal Trade Commission averages nearly five years to complete a restraint-of-trade case. It took the Federal Power Commission 11 years to determine how to regulate the price of natural gas. This regulatory lag as yet shows no signs of diminishing.

Another hidden aspect of regulation is the adverse effect on the ability of business to increase both production and employment. In a study conducted by Edward Denison of the Brookings Institution, it was found that business productivity in 1975 was an estimated 1.4 percent lower than it otherwise would have been because of the costs of meeting governmental pollution and job safety requirements. When taking into consideration the fact that the total annual gain in productivity experienced by the American economy may only be two to three percent, this amount becomes staggering. The productivity loss amounts to a reduction of about $20 billion in the annual level of the gross national product.

Employment is also adversely affected by government regulation. This has been demonstrated by the minimum wage law. Teenagers, especially those from minority groups, have increasingly been priced out of the labor market. A recent study showed that the 1966 increase in the statutory minimum wage resulted in teenage employment in the U.S. being 225,000 lower in 1972 than it otherwise would have been. With the current recession and high unemployment rates we are experiencing, these statistics have most likely increased dramatically.

Another cost of regulation is reflected in the resources a business

must expend to respond to the direct or indirect effects of regulation. These responses are often in the form of cut-backs on new capital formation because of the diversion of funds to meet government-mandated requirements. Regulation affects the prospects for economic growth and productivity by levying a claim for a rising share of new investments in an industry. This has been especially evident in the environmental and safety areas in which government-mandated outlays account for almost one-tenth of all new capital formation.

In addition to the diversion of capital, management's attention is increasingly diverted from such historic functions as product development, production, and marketing concerns to meeting government-imposed requirements. What results is a significant bureaucratization of corporate activity. We are being forced to modify our traditional definition of free enterprise and alter the functions of the participants in that system.

I would like to share with you some federal regulations that the Illinois Department of Commerce and Community Affairs has become concerned about through our various constituent groups.

The Comprehensive Employment and Training Act, more commonly known as CETA, has been the object of frequent criticism since its inception. Throughout its history there have been clear examples of abuse of funds and poor management. However, a lot of positive results have also been accomplished through CETA. In an attempt to curtail abuse of CETA funds, the United States Department of Labor has imposed regulation after regulation with respect to the use of funds and participant eligibility. These regulations may have helped reduce some of the system's abuses, but they

have also stifled the state's ability to use CETA funds in a creative manner tailored to our needs. In Illinois, we are currently experiencing a decline in the number of manufacturing jobs due to the slump in the auto industry, the steel industry, and the construction and farm machinery industries. It has become necessary for these industries to lay off a number of skilled workers. These unemployed workers find themselves barred from any of the retraining programs available under CETA because their recent employment makes them ineligible as CETA participants. We feel CETA participant eligibility requirements should be lowered in private sector training programs to allow the short-term and moderate-term unemployed to participate in the CETA program. We find that the short-term and moderate-term unemployed are generally skilled laborers from the industries I have already mentioned. We should strive to keep these skilled workers in Illinois through the use of retraining programs, but due to CETA eligibility requirements, we find many of them leaving our state in search of employment elsewhere.

I am sure that many of you are aware of the provisions of the Davis-Bacon Act which require a developer to pay the prevailing wage rate on any project in which there is federal participation. Currently, even one dollar of federal participation in a project subjects the developer to these restrictions. This frequently results in an unnecessary economic hardship on a developer. We feel the requirements of the Davis-Bacon Act should only be imposed when federal participation exceeds a specified percentage of the total project cost.

We all recognize the need to protect our environment from hazardous

waste and pollution. However, the regulations a business must confront in the environmental area are becoming increasingly stringent. A business must contend with federal EPA regulations, as well as state, county, and municipal standards. Unfortunately, the standards required are not always the same and may even be in conflict with one another. In addition, some types of businesses are accountable to more than one regulatory agency for approval of their facilities.

Other regulatory areas which I feel call for extensive modification and review include equal employment opportunity and OSHA.

Not all of the regulatory problems being experienced in Illinois are the result of federal agencies. Illinois also stands in need of regulatory reform. The two most publicized and well-known reforms called for are, of course, in the areas of workers' compensation and unemployment insurance.

Actions are being taken in Illinois to investigate the problem of government regulation. The Joint Committee on Administrative Rules, a committee composed of state legislators, is playing an increasing role in the oversight of the regulatory process. The purpose of the committee is to conduct a systematic and continuing study of the rules and rulemaking process of all state agencies for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and similar errors not affecting the construction or meaning of the regulations, and to make recommendations to the affected agency.

Also, in 1979 the Illinois legislature passed "sunset legislation" and established a Joint Committee on Regulatory Agency Reform.

The Joint Committee on Administrative Rules, the Intergovernmental Cooperation Commission, and the DCCA Small Business Office have begun discussions on a project to codify and data process all Illinois rules and regulations.

This system would allow us to identify all rules affecting a particular industry on a moment's notice. The legislature would also be able to identify all types of businesses which would be affected by proposed bills or amendments.

Governor Thompson has played a key role in bringing together representatives of government, labor, and management through the use of the "agreed bill" process to deal with the problems Illinois businesses are facing in the areas of unemployment insurance and workers' compensation. We find that the rising costs of UI and WC are becoming an increasingly heavy burden on Illinois businesses.

DCCA has played a role in working with the Joint Committee on Administrative Rules, the agencies, the Governor's Office, and the small business community in formulating the Flexible Regulations Bill (S546 Bloom). If passed, this bill would force all agencies to subject all new regulatory proposals to a rigorous small business review. Our Small Business Office will play a major role in keeping the business community involved here.

Illinois government has clearly heard the call from business and the taxpayers, and the new federal administration has shown ample signs that it is prepared to tackle regulatory reform.

No one--business, government or consumers--objects to reasonable government regulation, but no one can rationally defend regulations that are

arbitrary and restricting in an unnecessary manner.

The well-being and safety of the American people and the people of Illinois must be maintained, but we must keep in mind that their economic welfare is a major factor in government's total responsibility to the people.

I appreciate your invitation to appear before this hearing and thank you for the opportunity to address you.

Senator PERCY. Would our next panel be good enough to take your places at the table. It will consist of Henry Holling, Robert Carey, Richard Burket, Harvey Wexler and Richard Cloyd. The next panel represents the community of larger industries in northern and central Illinois. Some people may think that big business can take Government regulations in stride, but I'm sure that this panel will have quite a bit to tell us about the real costs to you. That is, to you, the consumers, of Government red tape.

Mr. Holling, the Caterpillar Corp. is one of the real economic pillars of the State of Illinois. I could not begin to estimate how many jobs are directly or indirectly tied to the continued success of your company, but it is in the tens of thousands. Given your importance to the State, and given Caterpillar's well-earned reputation for good corporate citizenship, I am sure that you would not be here today to comment on Government overregulation unless you were very concerned about the problem. I will listen with particular interest to your testimony. Is Mr. Holling here? [No response.]

Mr. Carey, suppose we begin with you then. The American Brick Co. has had tremendous difficulty with the EPA, I understand, and the enforcement of air pollution requirements. As you know, the Clean Air Act comes up for review this year. We'd like to know how much of your problems resulted from an act of Congress, and how much from EPA's own regulations in support of our statutes. We'd also like to hear your general views about the Clean Air Act. If possible, we'd be pleased if you could incorporate these points in your testimony.

Mr. Holling having arrived now, we'll begin in the regular sequence with your testimony and go immediately into Mr. Carey's then.

TESTIMONY OF HENRY W. HOLLING, MANAGER OF GOVERNMENTAL AFFAIRS, CATERPILLAR TRACTOR CO., PEORIA, ILL.; ROBERT CAREY, PRESIDENT, AMERICAN BRICK CO., DOLTON, ILL.; RICHARD E. BURKET, VICE PRESIDENT, ARCHER DANIELS MIDLAND CO., DECATUR, ILL.; HARVEY J. WEXLER, SENIOR VICE PRESIDENT, CONTINENTAL AIRLINES, WASHINGTON, D.C.; RICHARD CLOYD, MANAGER OF PUBLIC AFFAIRS, KEYSTONE STEEL, PEORIA, ILL.; AND THOMAS D. HOPKINS, ACTING DEPUTY ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. HOLLING. Thank you, Senator. I, like the other witnesses this morning, appreciate the opportunity to be here. Caterpillar has consistently supported your regulatory reform legislation, and, in fact, I think the last three Congresses you have authored legislation. And we've been one of those who have supported it and continue to do so. That's why we're pleased to be here today.

Senator PERCY. I might note, for the record, it has passed in the Senate in the last two sessions of Congress. We've just simply been blocked in the House. We're hoping now with Bob Michel's help we can carry it through the House. I think they're getting the message over there now about taxes and budget cuts and maybe they will in regulatory reform.

Mr. HOLLING. We sure hope so also. We consider ourselves, I guess you can say, experts in regulation, primarily because of the fact that in 1980 Caterpillar's regulatory bill went over $100 million. It cost the company $100 million to comply with regulation. Primarily on the basis of the study we conducted, we found that 95 percent of the regulatory costs were focused in the EPA and the Occupational Health and Safety Act. So that's why in our statement for the record we've focused on regulation from those two agencies as examples of overly burdensome and unnecessary regulation.

But in my statement this morning what I'd like to do is to save some time and give you what we think are the common problems, or the common theme in terms of problems regarding those regulations we highlight in our statement. First of all, we feel that the regulations concerning the emissions from stationary sources and the Clean Air Act—and goodness knows, Senator Percy, the Congress has to act on modification this year. We're very concerned that there is a slowing down of the momentum in reaching some reasonable change in the Clean Air Act, and we can talk about that later, but we need to have some reasonable, sensible movement, and especially in the House. The Senate is a little further ahead in its deliberations, on modification of that act.

But our concern with these regulations are first of all, they are established on the basis of insufficient evidence or on unsound data. Second, we feel that they have an unrealistic concept of the availability of control technology. It's the old story of someone in the drafting room of regulation who has been well schooled in theory, but who has little appreciation for the application to the real world and how something will actually be implemented on the factory floor.

Third, we feel that in regulation, and these examples we've given you in our statement, there is little attention to economics. Now, I suppose when people say economics, they think about the cost-benefit, cost effectiveness, and we do, too. But we don't think it's too much to ask that the same type of logic and process that we, as individuals, go through in our daily actions in the marketplace--whether it's shopping, considering a new car, or what have you—be used by regulators when they draft regulations and when they promulgate specific rules.

And, finally, in terms of common problems among these regulatory areas, we feel that there is apparent disregard for other national priorities. We think that regulation should consider the tradeoffs involved. After all, the country is concerned about international competitiveness, it's concerned about economic revitalization, it's concerned about energy conservation. We feel that it's time to consider the tradeoffs involved with other priorities and to reach a balance that will help all of these important issues be resolved in a balanced fashion.

We think the administration is making some progress. In fact, they're making very good progress. I noticed just yesterday that Murray Weidenbaum mentioned that over 170 regulations have been reviewed, changed, modified, and deadlines extended by Vice President Bush's task force on regulatory relief. Senator Percy, we certainly support that effort, and, if I could just take a second to give you an idea of the attitude that seems to be in the White House these days in terms of regulatory reform, I was personally asked to track down a regulation that came from the Council of Economic Advisers, and my first

instinct was to take the direct route and call the CEA and see what happens.

So I dialed the directory number for the Council of Economic Advisers. The phone answered in Washington, and the voice said: "Hello, this is Murray Weidenbaum. May I help you?" Now, to me, and to Caterpillar, this indicates the type of approach, the seriousness, the commitment that is being made to really look at the regulatory overload that is on the economy today and to try to address it in a sensible fashion.

What's needed? What should be done? Well, we believe that regulation should establish goals and principles, but not try to get deeply into the dictation of technology or methods of compliance.

That's where regulation comes off the track. It should be based on sound principle. Now, Caterpillar does not oppose enhancement of the environment. In fact, our facilities are constructed and operated in such a way to enhance the environment. But regulation should address goals and principles and not try to dictate technology. The regulation should be worth the cost. There should be an understanding of the economics involved. They should be based on a documented need, on sound scientific basis.

In the diesel engine emission question, we have a test procedure being proposed that is based on faulty data. We spent millions of dollars to run a pilot test of the test in our laboratory in Mossville only to find that the new mandated test produces no improvement, or, I should say, it produces no additional data over the present test. And yet we're being asked to spend millions of dollars to reequip our test cells and to go on this new path. That's why regulatory reform legislation calls for internal reform—internal review is necessary. Regulations should be reviewed periodically along the 5-year cycle that you and others have suggested so that the ineffective, the unnecessary, the overly burdensome can be reviewed, can be modified, or can be discarded, if necessary.

You know, if a company like Caterpillar, with its resources and manpower, has difficulty meeting the regulatory requirements of OSHA and EPA, goodness help the plight of the small employer—those companies that are our supplier firms. If we have difficulty, and if we find it a challenge, certainly we have to realize that there is a serious, serious problem. That's why you're here today. That's why we're pleased to be a part of this and want to be involved in your efforts to help untie that regulatory knot. So with that statement, I'd like to thank you for the opportunity, and we'll respond to questions if we have time later. Thank you.

Senator PERCY. Thank you, Mr. Holling. I haven't drawn from my personal experience in these hearings, preferring to hear from others, but I'll take just a minute to give you, as manager of Government affairs of Caterpillar, an insight into some of the frustrations I reached and had in dealing with the Government as a businessman.

During World War II, my own company, Bell & Howell, manufactured millions of dollars of equipment for film printers, perforated splicers used in the professional film industry, and lend lease provided millions of dollars to ship this equipment to the Soviet Union as an ally of ours in World War II. We paid for them. It was in our interest to stimulate the film industry in the Soviet Union as they fought the Nazis with us. At the end of the war, when they occupied Eastern

Europe, we were put on the embargoed list, and we were no longer allowed to ship them even though they were now willing to place orders for them and pay for them.

But Bell & Howell had a licensee, the J. Arthur Rank Organization in England. We received a royalty. The Soviets placed millions of dollars of orders for the same equipment, and bought them from Great Britain. We received a modest royalty, but they received all the direct labor, all the overhead absorption, all the profit on identical machines, except for the label. One said Bell & Howell, and the other one said Bell & Howell Rank. That's all the difference there was.

Now, I went to Washington absolutely furious about the Export Control Act which increasingly was dealing American manufacturers out of competition, and opening the market for the Japanese, Italians, Germans, and French. You would have thought we were foreign agents helping those countries by regulating and restricting American manufacturers. Other governments help their manufacturers. We seem to have an adversary relationship and impede them. So we changed the Export Control Act, I was on the Banking Committee, and I went down there and added a simple provision to the Export Administration Act, that if other manufacturers around the world offer comparable equipment and the technology is not unique, then we can sell it to Hungary, Romania, Poland, the Soviet Union, and China, just as other countries can do. That was sensible, it seemed to me.

Then we came to the situation on the pipelayers for Caterpillar, our largest manufacturer. Lee Morgan spoke to me about this and said we have a restriction, and I said, well, that's true, but there is a restriction on agricultural exports to the Soviet Union, so it's in the national interest that we don't continue trade as usual as long as they've moved into Afghanistan. And to the everlasting credit of your company—and I have mentioned this in Washington to every one that would listen to me—Lee Morgan said, "so long as there is an embargo on agricultural products, I don't think we ought to press for the license on this. Let's just wait until the embargo is lifted." And the company restrained itself and didn't pursue the business. Now the embargo is lifted. Now the company would like to do business. And yesterday or day before yesterday, I talked to Secretary of Defense Cap Weinberger about it, and talked to the President's Assistant for National Security, Dick Allen, about it, to try to convince them that if we don't lift the restriction against Caterpillar, Japan, who offers comparable equipment, who just sold 150 pipelayers recently to the Soviet Union, is going to get all the business, and we're going to do without the employment, the overhead absorption, taxes, and so forth, that come to the American economy. But there is a Government regulation inhibiting American business and directly and adversely affecting a large manufacturer, the largest in the State of Illinois.

I am hopeful that the administration will see the light on this, and I'm saying this because we have a highly valuable member of OMB sitting here who will testify, but who also thoughtfully came early enough so that he could hear all the testimony. Those are the kinds of things that just seem to make no sense whatsoever. No unique technology about it at all. Pipelayers from Japan are comparable to those here, and even Caterpillar will admit that. What we've got to do is fight for the business now. Otherwise, the Government agency regulating

industry in Japan would love, just as Japanese, Italian, French, U.K. manufacturers, through the years have loved, the way we restrict American manufacturers, so they get all the business over there. So that's just one frustration I had to get off my mind, and I'm delighted to have had the chance to do it.

Now, Mr. Carey, we've already introduced you, and as president of American Brick, we're delighted to hear from you.

Mr. CAREY. Thank you, Senator Percy.

I want to thank Mr. Holling for letting me come into the light here because I consider ourselves a small business, and what I'm going to tell you is a tale that I don't think a lot of you are going to believe. We were formed in 1885. We manufacture common brick. Right now we are the only common brick producer in the United States, and we are being pressured out of business. We produced about 80 to 100 million brick a year. We supply just about every type building you can feasibly do. I've done homes, apartments, hospitals, big buildings down in the loop, little buildings in Peoria. In fact, driving down here I came down Highway 24, and I saw six jobs that we did over the years.

We employ about 260 people, and a little sidelight on that is that the average amount of time that these people have worked with us is 22 years, which is quite an average.

If we were to go out of business, 2,000 bricklayers would be out of work immediately. It will have a ripple effect of approximately 50,000 people, their families. Now, one of the problems we're having is with the EPA. About 12 years ago we were cited for air pollution by the town of Dolton, Ill. Since that time we have had many hundreds of meetings with the EPA. Also at these meetings have been at one time 12 different agencies. We have sat there trying to talk to 12 different agencies at one time, and I'm telling you it's absolutely an impossibility.

The thing that we have tried to get across is that we are perfectly willing to come up with anything we can feasibly come up with to test to put in that is reasonable. Over this period of time we have experimented with probably six different items. We have tried some of our own inventions that just partially work. We also tried electrostatic precipitators, scrubbers, and this type of thing. We have not really been able to come up with anything that will take care of the alleged problem we have. Where we are right now is the agency has literally told us that by June 30, 1981, we are to put in machinery that is not guaranteed to work and costs $11 million, or shut down.

Our situation is that we are worth $3 million, we make about $200,000 a year. To spend $11 million in our particular situation is absolutely terrible. It's almost an impossibility. Where do we stand now? We've asked for a consent order. I mean an extension on a consent order. We have yet to hear a response from them. As of this point we are now shut down. We had to sign a consent order, and in that negotiation they originally came into us and said you're to do this, or make some arrangement with us, or we'll shut you down and fine you $1 million. So, obviously, we tried to work something out.

We found a particular machine that was made by Flick Ready Corp. in Bensenville, Ill., and we ran an experimental program. This is the item that ends up costing $11 million. It has possibilities, but now

we're in a bad economic position, so we have applied to SBA and all the other agencies, but they have delayed any applications. We are right between everything at this point. Now, a suggestion I had which was in my statement was that a small company who is put into this position, and who started in 1885, and has continuously worked, is an atrocity to the Government of this United States that this has to go on.

I think we helped build America literally. I can't tell you how many billions of brick we have put out in the Chicago area. We've even gone out as far as California. And we are at the step of being put right out of business, and I don't know where the people of Chicago and the area are going to get their brick. If they get it, they're going to have to get it from down south. We're literally destroying all our industries in this area.

An example is the foundry industries. Four months ago we wanted to replace some wheels on our dryer cars. We were told we can't get them. And the reason is they're so jammed in the foundries doing different projects that we cannot get our wheels. We used to be able to make a phone call and 3 days later get a wheel. Now the reason for this is just about every small foundry in the State of Illinois has been shut down for exactly the same reason and for exactly not trying to fight this thing.

We have made a statement to the EPA up to yesterday, you're not going to shut us down. It's going to take a Supreme Court decision to shut us down. We're going to fight you right to the end. What we would like from Congress is if a small business is put in this position, to at least make a temporary variant system, like the State of Illinois has, a temporary variance as far as technology and economic feasibility. Also, if it is found that the company cannot afford, or cannot find technology, and it's impossible, and it can be proven, that they be given a variance until finances or technology can be found. Right now the Government says to me you either put in a piece of equipment that doesn't work or shut down. It's just not logical. So those are my statements, Senator.

Senator PERCY. Thank you very much, Mr. Carey, for a dramatic statement, and you present a challenge to this subcommittee and to the executive branch of Government.

Mr. Burket is vice president of Archer-Daniels-Midland in Decatur and Peoria. You do represent the No. 1 firm in what I consider to be and hope will be one of the most promising energy industries in America—alcohol fuels. We're pleased that Archer-Daniels-Midland has purchased the Hiram-Walker distillery in Peoria partly because of the jobs that you will be keeping in this community, and also because of the tremendous service you're providing our Nation in our vitally important quest to reduce our thirst for imported oil. A.D.M.'s experience with alcohol fuel serves as a model to others. You've seized an opportunity. You've done well at it. As I understand it, you've certainly helped the Nation in the process. This is the kind of business activity we want to encourage and not discourage. We'd be happy to hear from you.

Mr. BURKET. Thank you. With time limitations I will just concentrate on the unnecessary burdens just by one agency that we have experienced and that is the OFCCP, or the Office of the Federal Contract Compliance Programs. Now the OFCCP seeks to foster equal employ-

ment opportunity among Government contractors primarily through its concept of affirmative action.

Now that goal is laudable, and we do wholeheartedly support it. However, from our own experience, and from experiences shared with other companies, it's obvious that OFCCP translates affirmative action into just one word—numbers. It requires truly unbelievable amounts of statistics and numbers from businesses. While numbers have their place, they never tell the whole story because in this area we are dealing with people, and people cannot be quantified like fungible goods such as corn or soybeans. It is apparent to us that OFCCP has forgotten this fundamental truth.

I'd like to give you an example of something that we have experienced. More than a year ago, A.D.M. was notified that its Decatur facilities would be reviewed by OFCCP. The reason for this review was to us ludicrous. More than 2 years before that time, one of our employees had been terminated. The employee filed a grievance under one of our collective bargaining agreements, stating that he had been improperly terminated. His union took the grievance into arbitration, and it defended the employee vigorously. Yet the neutral arbitrator ruled that the termination was justified. The employee then filed his complaint with the OFCCP, which ultimately commenced its review of A.D.M. due to that complaint. Needless to say, we wound up justifying this employee's termination a second time, because OFCCP would not accept the arbitrator's decision on the original complaint. I also am aware of another OFCCP case in which a review was instigated by, and relief was sought for, employees who had previously filed Federal court lawsuits which either had been fully litigated, were being litigated, or which had been dismissed due to settlement.

So these incidents graphically demonstrate one of the totally unnecessary aspect of OFCCP's activities—complaint processing. Employees already have so many forums in which to litigate their complaints—EEOC, which practically duplicates the OFCCP's work, NLRB, local and State human rights and labor agencies, OSHA, the courts and arbitration—those are all forms for which OFCCP is acting in a redundant capacity. An employer should not be forced to endlessly defend itself from the same charge.

When our review began, we were confronted with three different investigators—one for each of our physical Decatur locations. Unfortunately, this meant that we had to assign at least three, and often more, employees to assist the review of the investigators—an unnecessary expense to us. But, more importantly, our personnel could discern very little common ground in the methods that these three investigators are using at separate plants, all located in Decatur and operated by A.D.M. Thus, we were forced to undergo essentially three separate investigations, when one investigation covering all three facilities should have been conducted.

And today we still are reaping some of the bitter fruits of these inconsistent investigations. Our personnel department has rewritten several sections of our affirmative program many times in response to differing OFCCP pronouncements regarding an acceptable format. And I'd also like to point out these pronouncements come in the form of commands to submit additional materials or revisions within 1 week or less, accompanied by threats of dire consequences if we can-

not comply. One such short notice of demand was made during the week prior to Christmas, which I think is illustrative of some of the attitudes.

The OFCCP's requirements on establishing availability figures for minority and female employees is too complex to discuss here, but it is covered in detail in our written submission.

The basic problem in this area of the OFCCP is they insist upon substituting its own subjective judgment regarding availability estimates for our good faith estimates, even though OFCCP lacks any expertise in our specialized business. There is, quite clearly, simply too much room for confusion and wildly differing interpretations, even among OFCCP personnel.

Another problem arises when one negotiates, or attempts to negotiate, with the OFCCP. Frequently new faces appear on the scene, while old ones fade away. The result? Inconsistent positions on issues.

Before I summarize, let me say just a word about the cost of all this activity. Our personnel have spent more than 1,500 hours of time on this OFCCP review mentioned. We have copied thousands of documents and spent many tens of thousands of dollars. I am sure the Government also has spent a great deal of time and money on our review and for what? At present, nothing, because the review continues.

I have recounted these incidents to give you just a feel for the problems inherent in OFCCP's interpretation of its mandate. But really it boils down to a word you mentioned, Senator, and that is an absolute distrust and lack of knowledge of business and the people in it, it's an adversary position, coupled with an almost holy conviction in the righteousness of OFCCP itself. Obviously, such an approach does not foster a cooperative effort.

Additionally, insistence upon extremely detailed written programs, mind-boggling statistical analysis and complex compliance reviews further detracts from the employers' efforts to advance the employment opportunities of protected groups. The time and effort spent in such paper-pushing activities would be far more effective if spent in hands-on work with employees, applicants and community groups. I have tried to point out, business needs partners in its equal employment efforts, not adversaries. Until that fact is recognized, I fear we will remain trapped in a bureaucratic cage of paper and redtape, and we hope that Congress can help us by tearing down that cage, so that we can get on to the true job at hand and that is helping all kinds of people find employment. Thank you.

Senator PERCY. Thank you very much indeed, Mr. Burket, for your stimulating testimony.

Our next guest is Mr. Harvey J. Wexler, senior vice president of Continental Airlines from Washington, D.C. I think if my frustration was as great in the example I gave before involving Caterpillar, it was just as great in bringing competition and another airline into Peoria. Bob Michel and I engaged in a 3½-year battle with CAB. At that point I finally decided it would be better to abolish the agency. It was an impediment. It limited competition. It restricted service. It sat there in its bureaucratic glory dictating what service Peoria could have, and when there was a strike here on Ozark, it was a devastating condition for this city. Bob Michel and I teamed up on this. We finally made it possible, and I joined with four other Senators in authorizing the Air-

ne Deregulation Act, which I must say at first the airlines did not ee the light on. Out of 28 airlines, 25 of them opposed the act. Everyne believes deregulation is good except in our industry, we're differnt. That's the way truckers feel, and that's the way a lot of other peole feel, and then deregulation suddenly became a reality for them.

But certainly Continental ultimately found that this was a good enture. They supported the activity, and I think it would be interestng to hear from Continental as to what their experience has been, in horrendous industry, with terrific competition, with quadrupled jet uel prices. I do know one thing: the people of Peoria are very gratel to the fine service Continental provides to Kansas City and points est. I know it's stimulated their activity and provided, a great service hat the bureaucracy seemed bent on preventing from coming to Peoria, ut ultimately it did come and as Peoria goes, so goes the Nation. Ve've got competition all over the country now. Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman. You're perfectly correct hat you and Representative Michel deserve a great deal of credit. The Peoria service case wasn't a case. It was virtually a career.

In your opening remarks this morning you talked about the air ransport industry having gone from an environment of 40 years of ublic utility regulation where we had limited franchises, limited ntry, pricing control by the CAB. It was not unlike the public utility ndustry.

Since 1978, the bill that you cosponsored, has been enacted. We are s a practical matter now, at least domestically, in a complete state of eregulation. It has produced strains, and I think, Senator, this can xplain the apprehension of some of the carriers that opposed eregulation.

What has occurred, and this was predictable, and this is not necesarily adverse to the public interest, is an increasing number of brandew airline corporations. They are low-cost carriers. Not that they ay any less for fuel, not that they pay any less for capital, not that hey pay any less for rents at airports, but one factor, and one factor nly, and that's labor productivity.

The new carriers, and you have some in Illinois——

Senator PERCY. Midway Airlines being one of them.

Mr. WEXLER. Air Chicago is a brandnew one that's originating. Their costs are roughly 50 percent lower. Now, labor costs account for bout 40 percent of total operating costs in the airline industry. This as had a very, very severe competitive impact.

Now, what it's going to do is it's going to force the established arriers, whether they like it or not, for some it may be painful, to ind new ways of doing business. We have got to increase our labor roductivity and reduce our unit costs in order to compete.

Now, during this 3-year transition there has naturally been a conraction on the part of the established carriers. Most of them, in fact, xperienced bad losses, furloughed employees, and actually reduced ervice in most cases. They are now reaching the end of that line, and t has caused a very harsh incentive to scratch one's head and find new ways of doing business. You can't do it the way we did for 40 years. The ground rules have changed.

We at Continental are convinced that you can't do it; that is, you an't increase labor productivity without the cooperation of labor it-

self. And, hence, the employees themselves have seen this picture, and they have come up and proposed to management an employee stock ownership plan. Management would not concur with it until the employees themselves in a completely democratic vote voted for it. They voted 96.15 percent in favor of it. There are unionized elements of the company that have agreed that if this is implemented, they will renegotiate or alter modifications of their labor contracts which will result in some cases as much as a 20-percent increase in productivity in 3 years. We think it's absolutely fine. The management is fully supporting it. We don't say this is the only answer, but for us, our employee group has proposed it, and we think it's our answer.

And in that connection, connection with the employee stock ownership program, it is the only program I know of, Senator—and you touc..ed upon a tripod foundation you might say of the President's economic program—which is to abate inflation, increase savings, and increase productivity. I know of no other single program other than the emplyoyee ownership program that instantaneously does all three. Tax reduction will do it, but nobody can say for certain how much is going to go into savings versus consumption, and of that which goes into savings, how much is going to go into increased productivity. Economists can give you reasonable projections, but there are differences of opinions. This program accomplishes all three things in one fell swoop. Thank you.

Senator PERCY. Thank you very much for a very dramatic statement.

Our final witness is sitting at the table now. We have one additional witness we're going to call to the table.

Mr. Cloyd, you represent the largest steel company in the Peoria area. If our Nation is ever to regain its economic might, we have to strengthen two industries in particular. We have to strengthen the steel industry and we have to strengthen the automobile industry. We know that. At our first hearing on regulatory reform this past April in Rockford, we heard many people testify about how Government regulations were hurting the automobile industry. Perhaps you could add some light on how the steel industry is affected by Government regulation.

Mr. CLOYD. Thank you very much, Senator. I would add that our corporation is the third largest private employer in Rockford. We are also impacted by the effect on the automotive industry. We're a manufacturer of hardware and fasteners, and the automotive industry is a very substantial customer of ours. So I guess we get a double whammy both from the steel industry and the automotive industry as to the effects of the economy. I would say that it's unfortunate that the Federal Government chooses to enforce its domestic regulations so vigorously, and yet when it comes to matters relating to trade activities such as antidumping activities, enforcement seems to be virtually nonexistent.

Recently the Reagan administration has indicated that they would, in fact, pursue antidumping and some countervailing duties, and we're heartened to see that. Frankly, it's very disgusting to have swarms of regulators descend on a company which is fighting to do business when 50 to 60 percent of its competitor's products are being imported with virtually no care or concern by the Government. So I preface my remarks with those statements and say that 5 years ago the Council on

Wage and Price Stability came up with a catalog of the Federal regulations of the steel industry. They found 5,600 of them administered by 27 different departments and agencies. This catalog, which was not exactly a best seller, was made available to the Government. Unfortunately the regulations persist, although I guess we can say that the Council on Wage and Price Stability has gone to its just reward as being ineffective.

We would also say that in our business we receive an incredible number of forms and regulations to fill out. We've had virtually packing crates of forms from the Department of Commerce which had to be opened with a crowbar. They were forms reporting on inventories, specific down to different elements we keep in our inventory such as lead, zinc, tin, copper, things of that nature—very, very time consuming. We have 21 different plants in this country, and we have to report on operations in every one of those to a central reporting system, and then provide those in one central file. We also say that we support, and are very happy to see that you're a cosponsor of Senate Bill 1080 on regulatory reform. We would expect that one of the most important amendments to this bill would be that major rule determination and the regulatory analysis be subject to judicial review. I believe there will be amendments offered to that end.

We also understand there will be some sunset concepts applied to S. 1080. We would suggest that, as you have said, regulatory reform and sunset of the individual programs rather than the individual agencies would be the most expeditious way to carry that out. The American Iron & Steel Institute, of which we are a member, and which represents 93 percent of the steel production capacity in the United States, has already submitted a specific review of Federal regulations on 13 different issues to the Vice President's task force. I gave your staff two copies of that AISI report, which you should at least be familiar with before your report is submitted to your committee. We believe that Government's approach to regulation should be, as Mr. Holling and others have said, a matter of letting the marketplace work. There are far too many "command and control" type regulations which dictate technology rather than letting a company find a way with its own expertise to meet regulatory guidelines or goals.

I have a specific example which is just our particular horror story. Under the National Energy Conservation Policy Act of 1978 we report quarterly through the American Iron & Steel Institute. We're also required to submit annual reports to the Department of Energy on energy conservation. That's form No. CS189–C for any form freaks out there.

This reporting must be carried out for each plant location in the United States, and it must be attested to with legal penalties for the plant manager at each location. It also imposes on the plant manager the responsibility for narrative commentary on significant energy conservation measures adopted during that reporting period. This is an example of the form [indicating]. It has, I don't know how many pages to it, but it's very complex and very detailed. It requires quite a bit of time for each of our plant managers, who generally operate like small businessmen unto themselves in small locations, to try to fill out that information.

We can't imagine who sits in Washington reading report after report from thousands of industrial plants on their energy conservation matters. Frankly, I don't know whether this is some sort of industrial homework which is similar to writing on the blackboard, "I won't waste energy" a hundred times, or if someone actually uses this information. In either case, we think it's a colossal waste, and it should be discontinued in its entirety. The marketplace forces companies to conserve energy and that's exactly why companies are conserving energy.

We also find that we receive duplicate requests for the same information from a variety of departments. Each department wants the information in its own format and the cost of compiling the information and filling out the forms is indeed significant.

We suggest that much of this information requested is available in SEC reports and could be found in their Washington files. If the information other departments seek is that important, they should find a way to retrieve it from existing documents which are already filed. If they cannot justify the cost of obtaining that information, we do not see why that cost burden should be shifted to us so we end up doing the clerical work on information which is virtually of no value to us.

For your edification, I've also included a list of seven or eight forms which we fill out quarterly, annually, or monthly, which are virtually of no value to us. We can't see who in the world compiles this information in Washington and uses it. I won't go into the details of that.

In conclusion, I would say there are probably many other forms that we fill out, and many other regulations that we adhere to. We are very pleased to see that you are directing your attention to this, and we would support you in any way to cut down on this regulatory burden. Thank you.

Senator PERCY. Thank you very much, Mr. Cloyd.

At this time, with the indulgence of our panel, I think it might be very interesting to have Dr. Thomas Hopkins, Deputy Administrator for the Office of Information and Regulatory Affairs of the Office of Management of Budget from Washington, D.C., to join the panel. Dr. Hopkins, if you would be good enough to join us right here, we could move a microphone down.

We are delighted that you could be with us today. As you know, I have been working very closely with the Vice President and David Stockman, the Director of the Office of Management and Budget, to make these Illinois hearings an important part of President Reagan's regulatory reform efforts. I cannot overemphasize how important it is that the administration has sent representatives to these hearings. It is one thing to read letters and analyze the reports I will submit, but it is a whole different ball game to come out here as the eyes and ears of the President of the United States and be able to report back directly. Your patience in sitting through the hearing this morning so that you could hear firsthand and participate with this particular panel is very much appreciated.

In Rockford, I was pleased to have Donald Trilling, staff director of the President's Automotive Task Force, for our hearing on automobile regulations. I believe it was the first field hearing that he had

attended on automobile regulation. Yesterday, in Quincy, we were joined by Mr. David Metzger, special counsel for the Small Business Administration's Office of Advocacy. And today, in Peoria, I could not have asked for a more appropriate representative of the President than yourself. As a native of central Illinois, you can relate to the problems raised at this hearing better than perhaps anyone else in Washington.

We'd like to take a moment to also issue special congratulations to you for the work that your particular office has been doing. My staff has kept me apprised of some of the activities that are carried on in your office, and they lead me to believe that one of the most substantive analytical offices in the executive branch is now under your immediate direction. We expect to hear a great deal about your work in the future, and we're delighted to have you here today. Suppose you give your testimony now, and then we'll just ask you to stay with this panel, and, if you will be good enough, to stay on also to hear the other panels.

Mr. HOPKINS. Thank you very much, Mr. Chairman. I'm quite pleased to have this opportunity to discuss the President's regulatory relief program with you here today. I thank you for those fine introductory remarks. Right at the outset I should emphasize that however vigorous our own relief efforts are, our success is highly dependent on the cooperation of the Congress and the active support of our fellow citizens. Forums such as this one here in Peoria, and important legislative initiatives such as those on transportation deregulation and regulatory sunset demonstrate that you have been playing a vital leadership role in providing precisely the kind of support needed to make this whole thing work.

Clearly regulatory relief is long overdue. Regulatory burdens have been mounting at a worrisome rate, and previous administrations' efforts to restrain them have proved inadequate. The testimony already presented here today has dramatically and concretely identified some of the regulatory problems that need to be corrected and the dimensions of the problems. As another crude indicator of the problems that we're contending with—let me just mention a few numbers. The Federal Register is a daily Government publication containing every new rule and regulation issued by each Federal agency on any given day. In 1955 the Federal Register for the year contained just over 10,000 pages to print new rules and regulations. By 1976, it took 50,000 pages to print all the new rules and regulations that year. And by 1980 the total Federal Register length had grown to over 87,000 pages of new rules and new regulations being issued by agencies that year. These regulations are issued by some 90 different Federal agencies, each with its own rulemaking responsibilities and powers, at a rate of some 10,000 actions per year, unsettling statistics in themselves. The cost of complying with these regulations, while difficult to document, is substantial indeed, well above $100 billion each year as you pointed out earlier.

It is of course irrational to try to judge regulations in terms of their costs alone without looking also at their benefits, but it also is irrational to decree that society should bear those costs without having made one's best judgment that the benefits of the regulations do indeed justify those costs. We surely need better balanced and better

informed judgments than we have been getting. And this, in essence, is the spirit behind the administration's regulatory relief efforts.

Let me be more specific on these efforts.

On January 29 President Reagan sealed the pipeline that delivers new regulations just long enough to enable his team to sift through the some 9,000 Federal Register pages published just during the preceding month—40 percent more rules and regulations than in the previous January—and decide which of these so-called midnight regulations were unreasonably burdensome. Some three dozen of these regulations were set-aside at once as a result of this review.

Second, the President abolished the wage-price regulatory program of the Council on Wage and Price Stability. That program, though having laudable objectives, no longer was serving any useful purpose. It wasn't working. Yet 135 people were still employed to run the program, and its reporting burdens on American business were substantial. Indeed the entire agency died June 5, an almost unheard of phenomenon in recent years in Washington.

But most importantly, regulatory agencies have been placed on notice that regulation—both existing and new—must meet a tougher test than ever before. If a less costly, legally permissible alternative to the regulation could still get the job done, it is going to have to be used. And if even the least costly type of regulation generates more costs than it does benefits to society, that regulation is a prime candidate for elimination.

The means used to get the President's message across are a Presidential task force, a new Executive order, and a different breed of people being named to manage the regulatory agencies.

On January 22, President Reagan established a Cabinet-level task force on regulatory relief chaired by the Vice President. The task force's basic purpose is to be the catalyst for Government-wide regulatory relief, not for studies but for action. The task force created by the President and run actively and personally by the Vice President clearly established regulatory oversight at the highest levels of the Government.

To help carry out his program, on February 17, President Reagan signed Executive Order 12291, Federal regulation. That order accomplishes three tasks. First, it establishes officially the preeminence of the task force in matters involving regulatory relief.

Second, it sets forth the President's regulatory principles which I summarized earlier.

Third, the order established a centralized powerful review mechanism. Executive-branch agencies must submit all proposed and final regulations to the Office of Management and Budget prior to their being published in the Federal Register. OMB, in our office, reviews all these rules and regulations coming from agencies and reports back to the agencies on whether we think they comport with the President's regulatory principles. To aid in the review and consultation process, and to assure that agencies have an adequate factual basis on which to base their most important regulatory decisions, agencies are required to prepare regulatory impact analyses for each major rule. These regulatory impact analyses are essentially benefit-cost analyses providing clear explanation of the need for and the consequences of the regulation before any action is taken toward adopting that regula-

tion. Any disagreement with OMB's views about the conformance of a proposed or a final rule with the President's regulatory principles is referred to the task force, or, if necessary, the President to resolve the difference.

Obtaining adequate information before permitting a regulation to be adopted can result in some delay, and any resulting underregulation, of course, can be costly to society. But, as we all are so very well aware, overly stringent, poorly thought out and inadequately supported regulation also is costly, and the pendulum had swung far too far in that direction.

How have we been faring in these efforts? Briefly put, the average size of the Federal Register has been reduced since this program took effect by a third, the number of proposed rules cut in half.

Moreover, the Regulatory Calendar, which is a twice a year publication showing what regulations are under consideration and in the pipeline, was last published last December. The latest version of the Regulatory Calendar came out this week. This Regulatory Calendar edition shows that more than half of the regulations that were identified in the last Regulatory Calendar as under development do not appear in the current edition because issuing agencies under their new leadership installed since January have withdrawn or terminated or pulled back for further review more than half of the regulations that as of last December looked like they were going through.

To date we have received at OMB nearly a thousand proposed regulations sent to us since January for a review.

About 10 percent of these regulations have been found by us to be inconsistent with the President's regulatory principles and have been sent back, and they're not going forward. The average review has been completed by us in some 8 calendar days, hardly causing excessive delays in the regulatory process. These regulations have largely been minor housekeeping type regulations. Indeed, only a small handful of major regulations have even been submitted. Thus clearly regulatory agencies themselves have, under their new leadership, started demonstrating considerable restraint in coming forward with major new regulations. Just as an agency, to point to as an example, the Department of Labor, I think objective viewers would have to say, is experiencing a dramatic change in the nature of its leadership and the willingness of its leadership to consider balanced judgments before issuing new regulations.

The task force also is spearheading thorough overhaul of antiquated, unduly burdensome, existing regulation, quite apart from the concern about stemming the flow of new regulation, with the lead on individual problems being taken by the new heads of the rulemaking agencies themselves. Some 180 specific regulatory relief actions have been initiated thus far this year that could save American consumers and businesses as much as $6 billion annually without jeopardizing important social objectives.

In June, The White House released materials providing greater detail on the regulatory relief we have accomplished to date, and I am happy to make these materials available for your record. Much progress has been made already, but of course we've really just begun. In this respect we have been delighted with the hundreds of constructive submissions received from the public in response to the Vice Presi-

dent's March request for ideas on where regulatory change is most needed. Our plan is to use these submissions in helping agencies select the next round of relief candidates, beyond those already underway. And hearings such as this in Peoria provide another very useful way for us to learn about additional targets that need to be added to our review list. How well ultimately we will fare is of course a debatable point, but we certainly are acutely aware that performance, not rhetoric, is what counts, and we do need your help in making that progress.

Senator PERCY. Thank you, Dr. Hopkins, very much indeed. Your testimony has really brought back to me a recollection of a battle that I had with a dear friend of mine, George Schultz, when he was Director of OMB. As you know, we have oversight of OMB in our Governmental Affairs Committee of which this is a subcommittee. I'm a ranking Republican on it and George Schultz at the time wanted to take the "M" out of OMB and just make it OB, Office of Budget. He thought it was extraneous to have management in there, and I said, no, there is a great need for management in the executive branch of Government. You have testified that you have been able to use the management end of OMB to get a handle on Government regulation and to slow down the whole process of turning out all these forms. I'm sure you've accounted for a large part of the one-third reduction since January in pages of the Federal Register, so we commend you on that.

I have just two quick questions for you, and then a question for the entire panel. Dr. Hopkins, yesterday and today we've heard a great many witnesses complain about the problems that they have experienced with Federal regulations, paperwork and agency officials. We've heard complaints about FTC, DOE, HHS, SBA, EPA, and a full alphabet of Federal regulatory agencies. I wonder if you could comment on the specific issues that have been raised today, some that you have heard, and how the Vice President's Task Force on Regulatory relief will help businessmen like those who have testified this morning with the problems they've encountered.

Mr. HOPKINS. A number of the specific concerns that have been expressed today, and I understand yesterday, are in fact being addressed by the task force and by the agencies now. We released a list of these 180 initiatives underway and many of those initiatives are to try to correct some of the very specific problems identified here today.

Further, to the extent that any of the existing initiative don't address some of the specific concerns raised today, we are very receptive to suggestions channeled to the task force and the agencies themselves for additional work that should be undertaken. I think that the climate and the receptivity to constructive suggestions on the part of the regulators themselves have changed dramatically, and a call, or a question or a suggestion to the regulators with copy to the Vice President's task force will elicit a quite constructive response.

Senator PERCY. Thank you. The legal experts have commented that the Supreme Court struck a blow against cost-benefit analysis in its recent OSHA *Cotton Dust* case. I wonder if you could comment on that case, especially the new feasibility standard that was established by the court, and explain the effect it will have on your own deregulatory efforts.

Mr. HOPKINS. I'm not a lawyer, so I cannot speak with great knowledge about such matters. Further, the administration still has under active consideration just what are the implications of this decision and how far reaching it may be. But let me just take a stab at answering the question with those caveats notwithstanding. The Court did reject the argument that a health standard such as the cotton dust standard is required to meet a cost-benefit test, holding that a balancing of costs and benefits would be inconsistent with the command in the statute. The Court held that in promulgating health standards for toxic substances the Secretary simply must determine whether the standard's requirements are capable of being done, feasible in that sense. Feasibility has been given by the Court the meaning of whether the industry will maintain long-term profitability and competitiveness in the face of the specific health standard. That's the meaning of the word feasible that the Court seems to be moving toward and in a sense this does restrict the role of benefit-cost analysis.

But, on the other hand, the Court did not prohibit, and has not prohibited OSHA from using benefit-cost analysis and benefit-cost criteria in ordering its priorities for regulation—that is, in deciding which kind of substances are most in need of regulation—nor in setting standards for other than toxic substances or harmful physical agents. So it's a very narrow instruction by the Court applying to a narrow range of issues.

The Court has not decided the legality of cost-benefit analysis under statutory enactments other than OSHA. So it does appear that it restrained somewhat the role of benefit-cost analysis in one segment of OSHA's activities, but leaves the role for benefit-cost analysis wide open in the vast majority of regulatory situations that we encounter.

Senator PERCY. Thank you, Dr. Hopkins, very much.

Now one question for each of the panelists to comment on. We often hear regulatory reform advocates say that we should just get rid of design standards and replace them with performance standards. In other words, leave the initiative up to the private sector, say what the goal is, and let them use their own procedures in finding out how to achieve that goal. We should set broad policy goals and then let industry work within that framework. Left to their own devices, I've always felt that the business would be able to come up with more effective, less expensive ways of protecting, for instance, our environmental safety and other goals. Could we have the views of our panelists on this particular problem? Let's start with you Mr. Cloyd.

Mr. CLOYD. Senator, I believe we would concur that in most cases you're looking for an end result. And if that end result can be achieved more economically through a company's own ingenuity it's to its economic and competitive benefit. If we can demonstrate that we're meeting a standard, it should not be the concern of the regulatory body how we're doing it. We would support the concept of goals rather than "command and control" type regulations.

Senator PERCY. Mr. Carey.

Mr. CAREY. Well, in our particular case, for example, I ran into many, many situations where the agencies were dealing with very absolutely no concept of production, nor of finance. This really amazed me—the finance end of it. And to let us try to figure out how to come

up with the problem at the lowest price to me is absolutely necessary under this situation or else we're all going to go broke.

Senator PERCY. Mr. Burket.

Mr. BURKET. I would agree completely that we should be more capable of setting up our own performance criteria, and as long as we achieve the results, that's the way it should be done.

Senator PERCY. Mr. Wexler.

Mr. WEXLER. I would agree with that, too, but I'll be very fascinated tomorrow to see if Dr. Hopkins' office really agrees with what he says because they'll be issuing the Washington National Airport policy which is pending today in his office.

Senator PERCY. We'll give you a chance for a rebuttal on that. Mr. Holling.

Mr. HOLLING. Senator Percy, we would generally concur that given the flexibility, industry, and business would be able to achieve these goals in a more cost-effective and sensible manner than the legions of bureaucrats that unfortunately do not have an appreciation for the real world that we are facing. Thank you.

Senator PERCY. I want to thank the members of this panel very, very much indeed. We are running a little behind so we may have questions for the record for you. Any of you that would like to amplify on your comments, we'll keep the record open for several weeks so that you can do that. Thank you very, very much indeed for your thoughtfulness in being here.

[The prepared statements of Messrs. Holling (with responses to written questions submitted by Senator Percy), Carey (with attachment and response to written question submitted by Senator Percy), Burket, Wexler (with attachments), Cloyd, and Hopkins follow:]

Testimony of Henry W. Holling
Governmental Affairs Manager of Caterpillar Tractor Co.
Before the Senate Subcommittee on Energy, Nuclear
Proliferation and Government Processes
Of the Senate Committee on Governmental Affairs

July 2, 1981

Thank you, Mr. Chairman, for this opportunity to participate in these important hearings, and to discuss the impact of federal regulation on Caterpillar. I am Henry W. Holling, Caterpillar Tractor Co.'s Governmental Affairs manager.

At the outset we would like to acknowledge the leadership role you have provided in the congressional effort to reform federal regulation. We have been an active supporter of the reform initiatives you've sponsored in the past, and are pleased to continue that support today.

For several years, Caterpillar has been concerned about the growth, direction and impact of federal regulation. We agree with those who believe the public will benefit substantially from a reduction in the scope and cost of regulation.

As you know, the cost of meeting regulations has been estimated at over $100 billion annually. And a little closer to home, we have estimated the yearly cost at Caterpillar at about $100 million.

In a rather extensive study of the federal regulatory effect on Caterpillar, we found that approximately 95% of the total impact is associated with two agencies -- the Environmental Protection Agency and the Occupational Safety and Health Administration.

Now, does this mean that we are against all health and safety regulation or want to repeal the Clean Air Act for example? Absolutely not. We recognize some regulatory programs and costs are necessary and our endorsement of environmental improvement is a matter of record.

In previous congressional testimony, and other public communications, we have offered our suggestions for regulatory reform. Briefly, we believe regulatory reform should require that proposed regulations be worth their cost ... and/or be based on clearly documented needs. And, as you have specified in your legislation, we think it's sensible and reasonable to require that regulations be periodically reviewed to identify those which should be modified or discontinued. We also feel, based on our experience with $100 million worth of regulation, that for the most part regulations should establish goals -- and not dictate methods or technology of compliance.

We are encouraged with the intensity and progress of the new Administration in attacking the regulatory problem. In particular, Vice President Bush's Task Force on Regulatory Relief has made gains in weeding out ineffective, overly burdensome rules. Much more needs to be done, but progress is being made.

Perhaps one way to illustrate this progress is to relate a recent experience with the Administration's regulatory reform efforts. We were asked to track down a particular regulatory development which had reportedly emanated from the Council of Economic Advisors. So we called the Council of Economic Advisors for guidance and clarification. When the telephone was answered in Washington, the

voice said, "Hello, this is Murray Weidenbaum, can I help you?" Now, that's progress when the chairman of the CEA answers the phone and offers to help!

We would like to take a few minutes to respond more specifically to your request that we focus our testimony on some of the specific federal regulations that create unnecessary or excessive compliance burdens for Caterpillar. We have two top candidates for consideration.

One is the Clean Air Act -- both Title I, which deals with emissions from stationary sources, such as our factories, foundries and power generating stations; and Title II which concerns mobile sources, including heavy-duty diesel engines. The second candidate is the Occupational Safety and Health Act -- specifically Subpart G of Part 1910 which pertains to noise exposure, and Subpart Z of Part 1910 which addresses exposure to lead.

We support the goals of the Clean Air Act and the OSHA. But we have found that the regulations under these acts are often promulgated on the basis of inadequate data, an unrealistic concept of the availability of compliance or control technology, little attention to a cost-effective or cost-benefit relationship, and apparent disregard for the impact on other national priorities -- such as energy conservation, economic revitalization, and international competitiveness.

Let me cite three examples of burdensome and complex regulations. The first two examples come from the Clean Air Act, and the third results from the Occupational Safety and Health Act.

Title II of the Clean Air Act regulates emissions from cars, and on-highway trucks. Results have generally been good in some heavily industrialized areas. But now the "law of diminishing returns" is taking effect. It's costing more and more to get less and less. Our most immediate problem is with the Federal Test Procedure -- which will become effective with 1984 regulations -- designed to determine that engines meet prescribed emission standards. The new procedure, called a transient test, is supposed to measure particulate emissions for which standards are to be implemented in 1986.

This new test requires manufacturers to completely reequip their engine test laboratories with new, complex, expensive equipment. The total cost to the heavy-duty diesel industry of meeting the transient test is estimated to exceed $100 million.

Compliance with regulation frequently requires a long lead time. And in this case, the regulatory compliance clock is already ticking. So, we undertook an extensive evaluation program to, in effect, "test" the new transient test. We purchased and installed, at major expense, the necessary equipment. It was in our laboratory that the first test was run which met all the requirements of the proposed transient test.

We found that EPA's new test was unnecessarily complex, burdensome, expensive and based on highly questionable data. And even more important, we found that the test we presently use (called a 13-mode and transient smoke test) provides equivalent test results at no additional cost. For these reasons and to avoid further unnecessary expenditures, we recommend immediate withdrawal of the 1984

transient test procedure for heavy-duty diesel engines and retention of the present test. Here's a classic case where a new regulation simply does not produce any additional benefits to the public's health and welfare ... yet it would cost those upon whom these expenses must eventually be imposed, a broad section of the public, millions of dollars.

The second example of excessive regulation also results from the Clean Air Act.

Title I of the act affects the location and operation of facilities. In our opinion, rules flowing from Title I -- regulations concerning prevention of significant deterioration, technology-forcing pollution control requirements, construction in non-attainment areas, and state implementation plans -- form one of the most confusing regulatory programs on the books.

At Caterpillar, we now include an additional 2-to-2½ year period in our planning for certain new plants -- because of requirements stemming from the Clean Air Act. Even then, there's no assurance a permit will be forthcoming -- or that we can fully develop an industrial site once we've acquired it.

The Act sets unattainable compliance deadlines for older plants and systems -- air quality standards are to be met by the end of 1982. Such unattainable deadlines force the selection of technology which often proves inadequate -- and needlessly costly.

For example, Caterpillar has spent some $27 million on technology to control sulfur dioxide and particulate emissions of coal-fired boilers at some plants,

only to have the equipment fall short of completely controlling particulates. At one time, we faced the possibility of spending an additional $55 million to remove and replace this equipment ... for a miniscule gain in control. A study for the Illinois Pollution Control Board indicated the environmental benefit would have been $125,000 a year -- $55 million in capital expenditures versus $125,000 a year in benefits. To its credit, the Illinois Poilution Control recently adopted a regulation that sets particulate emission limits on these units at a level within the capability of the present systems.

But even if a company passes muster with the state regulatory agencies, the outcome is subject to second-guessing by the U.S. EPA. This situation -- and the uncertainty it introduces into capital investment decisions -- must be corrected if America is to move ahead and stay competitive.

Our third example of a regulation which we regard as excessively burdensome pertains to exposure to noise.

The Hearing Conservation Amendment promulgated January 16, 1981, by OSHA will have a significantly adverse impact on Caterpillar. It was originally scheduled to become effective on April 15, but has been delayed -- first until June 1, and now August 1 -- due to its major impact on plant operations and costs. The basic concept of the amendment is institution of a hearing conservation program for employees exposed to an eight-hour time-weighted average of 85 dBA. We do not disagree with this concept. Rather, we strongly object to the overly technical and inflexible requirements of the amendment.

Examples of burdensome and unnecessary requirements include the hiring of significant number of professionals, excessive testing and retesting of employees, replacement of equipment, and unreasonable recordkeeping. The regulation is overly rigid in requiring a 14-hour quiet period prior to testing, in providing detailed specifications of test booths and dosimeters, and in defining "substantial threshold shift."

In addition to these and other technical deficiencies, compliance will entail considerable cost. A conservative estimate of Caterpillar cost is $4.2 million annually. The regulation is not a cost-effective approach to protecting hearing. We believe that a more effective and economical approach would be to grant an employer the flexibility to institute a program of hearing conservation specifically designed to his industry, facilities, and compliance resources.

Time does not permit us to go into detail on the other regulations which are overly complex, expensive and ineffective. However, we recently provided Vice President Bush's task force with a listing of the most excessive and burdensome ones. We submit that list as Exhibit I, attached to this testimony.

In closing, we would like to emphasize that Caterpillar recognizes that regulation isn't necessarily bad. But as has been discussed, much regulation goes beyond what can be considered necessary, reasonable, sensible, and cost-effective. We support the basic approach taken by the various proposals for internal reform of the regulatory system such as the legislation sponsored in the past by the chairman, and legislation now sponsored by Senator Laxalt. As Congress works with these various proposals, we believe the final regulatory reform product should contain:

-- Requirements for analysis -- wherever appropriate -- of the cost/benefit and economic impact of proposed regulations.

-- Requirements that regulatory agencies choose, from among alternatives, the most cost-effective regulation that achieves the regulatory goal.

-- Five-year periodic review of existing regulations.

-- Improved opportunities for public input before a final regulatory decision is made.

-- Requirements for publication of semiannual agenda of proposed regulations.

-- Better administrative practice, related to rulemaking.

-- Requirements that proposed regulations should be reviewed by other executive agencies which have expertise in cost-benefit analysis.

We also endorse a comprehensive sunset provision as favored by the chairman. This would require regulators to justify their continued existence, and impose upon Congress greater accountability for programs it routinely authorizes. Proposals not requiring an affirmative action by Congress (to accept or reject an agency's existence) aren't strong enough.

Caterpillar also supports shifting the burden of proof for imposition of a regulation to the advocating agency. If a government agency seeks to intervene

in the private sector, it should show good cause to do so ... and show that it hasn't acted in an arbitrary manner. Of course, safeguards should exist to insure that unwarranted or frivolous legal actions, which could tie up the courts and undermine basic regulatory objectives, are not allowed.

We appreciate the opportunity to express our views on the impact of federal regulation and we wish the chairman every possible success in his continuing efforts to accomplish effective reform.

90-375 O - 82 - 10

CLEAN AIR ACT OF 1970 (CAA)
BURDENSOME REGULATIONS

Regulation Identification	Impact on CTCo.	Recommended Changes
Title I (Stationary):		
1. Prevention of significant deterioration (PSD); regulate deterioration of clean air areas through classification and numerical increments to define amount of additional allowable pollution.	1. Significantly limits, and in some instances prevents selection of expansion of existing facilities and development of greenfield sites.	1. Designate all non-Class I areas as Class III and simplify redesignation process to remove unnecessary delays.
2. Layers of technology forcing pollution control requirements (BACT, RACT, LAER) depending upon air quality areas.	2. Requirements for different control technologies (BACT, RACT, LAER NSPS) show little difference in actual emission. All are time-consuming and costly to implement.	2. Adopt new source performance standards (NSPS) for the same pollution category and BACT where NSPS not yet developed. Plants permitted under NSPS should be protected for a period of 10 years from tightened standards.
3. In nonattainment areas, all plants must demonstrate total compliance for issuance of a construction permit.	3. Nonattainment by one plant places all plants within that area in jeopardy.	3. Remove this requirement. Each plant should be "permitted" separately for compliance purposes.
4. Assessment of automatic non-compliance penalties regardless of good-faith efforts.	4. Maximum civil penalty is $25,000 a day per violation.	4. Non-compliance penalties should apply only to the truly recalcitrant. Plants demonstrating good faith effort should be granted relief from automatic penalty requirements.
5. State implementation plans are subject to review by USEPA when any changes are made.	5. Second guessing by USEPA forces industry to undergo double review of compliance plans. Causes delays, increased costs, and added uncertainties.	5. Remove USEPA from role of judge concerning every SIP revision. Allow state agencies flexibility to meet clean air challenges as they see fit as long as health & welfare goals are met.

Regulation Identification	Impact on CTCo.	Recommended Changes
Title II (Mobile):		
6. Current regulations compute diesel emission regulations on gasoline baseline.	6. Currently known and proven diesel technology does not permit emission reductions down to gasoline baseline levels.	6. Separate standards for diesel and gasoline engine emissions.
7. Provides for a 75% NO_x reduction from gasoline baseline.	7. Competitive features of diesel engine: durability, power, fuel economy ... will be adversely affected by NO_x regulations requiring a 75% reduction.	7. Standards should be based on sound scientific analysis and be achievable through use of adequately demonstrated diesel technology.
8. A 1986 particulate standard has been announced -- 0.25 g/bhp-hr. with use of oxidizing traps.	8. The standard is much more stringent than initially thought and to date unachievable by industry.	8. The current smoke standard provides control of particulates. It should be retained.
9. Adoption of a transient test to replace the current testing methods to measure emissions by 1985.	9. Implementation of the transient cycle will require CTCo. to invest $8 million in capital expenditures for special equipment and facilities. Overall, it will cost industry more than $100 million. Industry will also lose the data base developed over 10 years of emissions control certification.	9. EPA should withdraw the transient test until a real-time transient cycle has been developed and approved.
10. In-service durability -- establishes durability testing of HD diesel engines in conjunction with the NO_x standard.	10. In-service durability would be an unmanageable regulatory tool and place manufacturers in a position of jeopardy.	10. Eliminate in-service durability testing for diesels.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (OSHA) -- PART 1910
BURDENSOME REGULATIONS

Regulation Identification	Impact on CTCo.	Recommended Changes
Subpart D --"Walking-Working Surfaces" Regulates interior-exterior surfaces of workplace, physical dimensions, structures, etc.	Requires costly revamp of existing facilities so as to conform to specifications which may have questionable relationship to workplace safety.	Change basis for standards to one keyed to "performance" (i.e., requiring use of causal data which indicates the relative safety of conditions, structures, etc.)
Subpart E --"Means of Egress" Regulates the location, dimensions, number, etc. of walkways and exits.	This regulation relies on the Life Safety Code as basis for its provisions. In order to meet these various requirements, thousands of square feet of potential production and storage area would need be sacrificed with no appreciable increase in employee safety.	Revise basis for regulation to one of "performance" (see above) thereby allowing a more efficient use of floor space.
Subpart Z --1910-1025--"Lead" Establishes standards for employee exposure to lead.	The allowable exposure to lead was decreased from .2 mg/m^3 to .05 mg/m^3. Because of this revision, it will be extremely difficult and expensive for Caterpillar to meet the required exposure level without use of personal protective equipment (considered a secondary method for reducing exposure).	Return the exposure level to .2 mg/m^3. Increase agency reliance upon use of personal protective equipment.
Subpart G --1910.95--"Noise Exposure" Establishes exposure limits for hearing conservation programs ... may set bases future employee claims.	The original allowable noise exposure level of 90dBA, (accomplished via engineering control), continues to place a substantial burden on industry. Presently, the agency is pushing for reduction of allowable exposure to 85dBA ... a 50% reduction in allowable noise levels.	Retain standard at 90dBA and allow use of personal protective equipment.

Regulation Identification	Impact on CTCo.	Recommended Changes
--1903 & 1977--"Walkaround Pay" Employee representatives must be reimbursed by the employer while participating in OSHA inspections.	In addition to the expense incurred by such a standard is the genuine question as to whether it has any effect on employee health and safety.	Revoke the standard and allow this provision to be a negotiated item between employer and employee.
--"Employee Complaint Procedure" (PL 91-596) Establishes procedure for employee complaints under the OSH Act.	The Area Director has discretionary authority regarding the need for an investigation or inspection, yet we find discretion is not being used. Less than 25% of investigated complaints are eventually proven valid. Cost to Caterpillar is in the form of management time and disruption of work processes.	Suggest Area Directors be encouraged to target agency resources and treat unsubstantiated or frivolous complaints via use of telephone or written communications with the employer. In addition, suggest minimizing on-site inspections.
--1910.20--"Access to Records" Provides an employee or employee representative, may have access to his/her medical and exposure records.	Liberal, poorly written provisions of regulation allow extensive abuse by labor unions seeking to harass and incriminate employers. Broad definition of "exposure" extends coverage beyond reasonable limits.	Revise regulation so as to only allow employee access (no provision for employee representative). Remove employee's right to photocopy records.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (41 CFR 60)
AFFIRMATIVE ACTION GUIDELINES
BURDENSOME REGULATIONS

Regulation Identification	Impact	Recommendation
--"Utilization Analysis" (Sec. 60-2.11) Requires reporting all jobs within a facility by race and sex.	Creates extreme paperwork burden involving manual and computerized data collection. Has become a punitive tool rather than a positive contributor to affirmative action.	Eliminate Sec. 60-2.11.
--"Goals and Timetables" (Sec. 60-2.12) Requires employers to establish specific minority and female employment goals by job groups.	Agency interpretation of this section has resulted in forced goal-setting which is in essence creating "quotas."	Eliminate Sec. 60-2.12.
--"Preaward Review" (Sec. 60-1.21) Before a contracting agency can accept a firm's bid, it must determine by inspection that the firm is in compliance with Executive Order 11246 and 402 and 503.	Creates expensive, duplicative and unnecessary paperwork load since regulation already provides for regularly scheduled compliance reviews.	Eliminate Sec. 60-1.21.
--"Processing Complaints" (Sec. 60-1.24) Allows OFCCP to conduct complaint investigation during a compliance review.	Constitutes duplication of EEOC activities. Unnecessarily delays completion of a compliance review.	Vest all responsibility for complaint investigation and resolution to a single agency (e.g., EEOC).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION -- CIVIL RIGHTS ACT TITLE 7

Regulation Identification	Impact	Recommendation
--"Sexual Harassment" (29 CFR 1604) Guidelines for investigation and resolution of employee complaints regarding sexual harassment.	Wide coverage of this guideline expands scope of explicit employer liability. Prohibits acts committed by non-employees and third parties. Effect is to needlessly increase employer expenses.	Reduce scope of coverage to only those incidents directly within the employer's knowledge and control.
--"Religious Discrimination" (29 CFR 1605) Guidelines for investigation and resolution of charges of religious discrimination.	Expands Title VII definition of "religion" to include strong personal beliefs and/or convictions. Results in excessive work force costs.	Confine scope of coverage to major, traditionally accepted religious groups.
--"National Origin" (69 CFR 1605) Guidelines for investigation and resolution of charges of discrimination based on national origin.	Enlarges congressional intent of national origin discrimination in Title VII to include "association with and/or marriage to" member of an ethnic group.	Confine scope of coverage to those major ethnic groups which have been objects of "pattern discrimination."

CATERPILLAR TRACTOR CO.

ADDITIONAL QUESTIONS FOR MR. HENRY HOLLING, MANAGER, GOVERNMENTAL AFFAIRS, CATERPILLAR TRACTOR CO.

Q. Mr. Holling, I recently held a hearing in Rockford on auto industry regulations. We spent a lot of time at that hearing reviewing President Reagan's plan for regulatory relief for the auto industry - much of which would affect Caterpillar. The Reagan plan calls for the revision, recision, or delay of 34 EPA and NHTSA regulations, which could result in saving $10 billion or more in consumer and capital costs over the next several years. I would like to know your opinion of this relief package. Will it help Caterpillar?

A. The program for regulatory relief proposed by President Reagan's Cabinet-level Task Force issued on April 6, 1981 entitled "Actions to Help the U.S. Auto Industry" primarily addresses problems faced by the automobile and light-duty (LD) truck manufacturers. Although some provisions would affect Caterpillar and other heavy-duty (HD) diesel truck engine manufacturers, the relief package does not adequately address the majority of regulatory problems faced by the heavy-duty diesel engine industry.

Of the 18 Actions noticed, only 7 could help Caterpillar Tractor Co. A brief discussion of these 7 initiatives follows:

1. Revise the statutory HC and CO standards for heavy-duty trucks to a level that would not require catalysts.

   Discussion: The EPA intends to revise the 1984 model-year hydrocarbon (HC) and carbon monoxide (CO) standards for heavy-duty trucks to a level that would not require the manufacturers to use catalysts on their gasoline-powered heavy trucks. EPA will publish a notice of proposed rulemaking on this action by September 1981.

   Impact on Caterpillar: This action could help HD diesel engine manufacturers only if they exercise the option to use the transient test. Accompanying any actions on HC and CO standards must be a review of the steady state, 13-mode test and the 0.5 gram/bhp-hr. HC standard. The revision of the CO standard would have little affect on HD diesel engines due to the fact that current CO emission levels are well below the proposed standard.

2. Relax the 10 percent Acceptable Quality Level (AQL) to 40 percent for assembly line testing of light and heavy trucks.

   Discussion: Exhaust emission regulations for light and heavy trucks specify that their engines must not exceed a failure rate of 10 percent during assembly-line testing. This is a new requirement for heavy trucks and a change from the 40 percent AQL for light trucks. EPA intends to revise its rules for both light and heavy trucks to require a 40 percent AQL, making it consistent with that for automobiles.

Impact on Caterpillar: The 10 percent AQL would have the practical effect of lowering emission standards. Manufacturers will have to achieve emission levels in production below the required in-use standards in order to insure that all engines will pass. Relaxation of the 10 percent AQL to 40 percent would help all manufacturers of HD diesel truck engines.

3. Delay assembly-line testing of heavy-duty engines:

Discussion: EPA intends to delay for 2 years all assembly-line testing (selective enforcement audits) of 1984 and later model year heavy-duty engines for exhaust emissions to allow phase-in of the new transient test.

Impact on Caterpillar: While a two-year delay in assembly-line testing would provide interim relief to HD diesel engine manufacturers, complete withdrawal of the transient test and reassessment of the test procedure issue is essential.

4. Relax the statutory NO_x emission limits for heavy-duty engines:

Discussion: The Clean Air Act requires a 75 percent reduction in heavy-duty NO_x emissions from the 1969 gasoline baseline. This requirement is subject to remission by the Administrator after determining the maximum degree of emissions reduction that can reasonably be expected to be available for production.

Studies indicate there are major technological problems for diesel engines in meeting the statutory NO_x limit. EPA intends to propose a NO_x level for all heavy-duty vehicles that represents the level that can be achieved by diesel engines. EPA will not propose the NO_x standard until May 1982.

Impact on Caterpillar: A relaxation of the NO_x standard would be essential to continued use of HD diesel engines in the U.S. because there is no practical means to meet the statutory requirement. The EPA advanced proposal, calling for a 4 grams/bhp-hr NO_x level is not feasible at this time. Relaxation of the NO_x standard is essential to the survival of the heavy-duty diesel engine industry.

5. Institute NO_x emission averaging for light and heavy trucks:

Discussion: EPA will propose an emission averaging scheme for manufacturers to meet the NO_x emission requirements for light and heavy duty truck engines. The Agency has announced an averaging seminar scheduled for late September to receive public input on various averaging proposals.

Impact on Caterpillar: The concept of emissions averaging has received a great deal of attention and discussion. Certain approaches, such as allowing averaging across technologies (diesel and gasoline) and product lines (light-duty and heavy-duty) would present totally unacceptable competitive risks to independent manufacturers such as Caterpillar that made only heavy-duty diesel engines. A more practical approach would be to allow for averaging of heavy-duty emissions within engine families.

6. Further streamline the motor vehicle certification program:

Discussion: EPA will make changes in the administrative process by which motor vehicles and engines are certified for compliance with exhaust emission standards. This effort will focus on reducing paperwork and increasing industry flexibility and will include steps to assure that in-use compliance will not suffer.

Impact on Caterpillar: If properly done, this action could provide significant regulatory relief but would require extensive revisions to the entire approach to verification of engines to emission standards.

7. Provide sufficient lead time for compliance with emission regulations:

Discussion: EPA will assure, in future rulemakings, that there is sufficient lead time for compliance with automobile emission regulations, as measured from the date of promulgation of the regulations.

Impact on Caterpillar: If also applied to heavy-duty trucks, this action would be of significant assistance to Caterpillar if the technology for compliance was available at the time of promulgation.

HWHolling
August 27, 1981

Distributors of Face Brick and Careylite Concrete Units

AMERICAN Brick COMPANY

6558 WEST FULLERTON AVENUE • CHICAGO, ILLINOIS 60635 • 312 622-7313

PREPARED STATEMENT OF ROBERT CAREY

I want to bring a problem to your attention. I felt this story should be told because it is obvious to me and many other small businesses in the United States that the business world is on the verge of bankruptcy. If something is not done to bring to the front that which all of the recent laws and regulations are doing we will definitely be bankrupt or will be under the complete control of the Government, which in my opinion is not what the Fathers of the Country had in mind. Below is a statement of what the problem is and a short history of the brick plants, what we have done to solve some of our problems, and where we stand now.

I hope you can help a long-established firm to stay in business and to be able to serve the industry for another 100 years.

The problem is that the Enviornmental Protection Agency complains that our company, the American Brick Company, exceeds the allowable Illinois maximum air emissions under Rule 202(b) (Visible Emission), 203 (Particulate Matter), 204(f) Sulfur Dioxide).

American Brick Company has two plants. One plant is located in Dolton, Illinois, a close suburb of Chicago, and has been making brick since the 1880's. The second plant is the Munster, Indiana plant which has been operating since 1905. These plants are the oldest union brick plants in the nation. The men belong to the United Brick and Clay Workers of America and are presently in Local 2 and Local 5.

We are the last company in the country to produce common brick. We can produce somewhere between 80,000,000 to 100,000,000 brick a year. We checked with some brick associations and have come up with a sales figure of about 300,000,000 brick a year being shipped in the greater Chicago area, of which we supplied between 25 and 30%. In 1978 and 1979 there was a shortage of brick and we constantly had the bricklayers union calling us to see if we could make more. They told us that there wasn't enough material for the men and that they had to lay people off. The bricklayers union estimated that if we don't produce in this area, they could lose 2,000 jobs and would have a ripple effect that would eventually affect 50,000 people.

The plants are located on 60 acres of land containing a natural blue clay. We mine our clay by digging with a dragline and putting the clay into railroad cars or shipping it by truck. We deliver the clay to the plant, where it goes through a series of knives and crushers, putting the clay into a state where it can be molded. We then mold the clay and cut it into brick sizes. The bricks are then piled on cars that hold 1,000 bricks each. These cars are then transferred to our dryers, where they stay for two days at a temperature of 250 degrees. The exhaust temperature is 150 degrees. The bricks are then transferred to our kiln, which consists of 1,500,000 bricks. The kilm size is 40 feet wide, 120 feet long, and 25 feet high. We have nine consecutive kiln grounds in about a 1500' building. We burn these bricks for 55 to 60 hours. Approximately 30 to 35 of these kilns are produced in a normal year. The end result is 15% to 17% waste per kiln. We can do three things with the waste: 1) we use it as a grog by crushing the waste and then putting it into the clay when the clay is wet; 2) we send the waste out as the base for roads; 3) we use it ourselves under our railroad.

Years back, the bricks were dried and burned with coal. Until thirteen years ago, we dried and burned bricks with oil. At that time we made a contract with the gas company to supply gas on a full-time basis, and since then we have burned our brick with gas.

We find that only in the last 30 hours of burning do we have any problem with pollution. This means that for about 30 to 35 times a year we have a problem for a limited time.

What are we doing about the problem? As I mentioned above, we have switched to all gas. We also have devised a way of having an afterburner effect on our kilns by putting our clinker brick on top of the kilns. This method helps, but we are finding that the high temperature is having an adverse effect on the roof of our shed. We are also putting glass insulation on every kiln to act as a filter.

We have tried a Venturi Scrubber and a Regular Scrubber, but to no avail. We have experimented with a Electrostatic Precipitator and have been advised by our engineers that it could help but only on a temporary basis. The engineers feel we would still have a problem even after installing the units. We not only would continue to have a problem, but we would be creating new problems such as water pollution and would need a lot more power and water. We would also have to install a filter plant for the newly created water pollution. Otherwise we would be in violation of the clean water act. The latest invention we have experimented with is a Dry Lime Scrubber. It looks a little promising but could cause a problem because of the high cost.

The collection of the air is also a problem. We would have to install a movable stainless steel hood that would go over each one of the kilns and travel 1500 feet. The unit would also have to have a 10' duct work of stainless steel 1500 feet long. Additional power, pipe, water, etc. would be necessary. Our engineer says that at this time he cannot tell me how to solve this collection problem. He says it would take a lot of experimenting to get an answer.

The Federal EPA's engineering firm "Gard" has even said that they would project three concepts to look at or try to collect the emissions. At the end of their report they state: "All three concepts carry with them significant technical questions which remain unanswered at this time. None of the concepts fall into what we would call State-of-the-Art-Hooding and Ducting Arrangement."

The question now is "Where do we stand now?"

American Brick Company has tried for years to find a solution to its alleged problem. We have taken every EPA suggestion and tried it. We have tried every idea that has been brought to our attention, but up to this point we have been unable to find anything that is technically and financially feasible. We signed a consent agreement in 1978 to test an Electrostatic Precipitator by a certain time and we did that. In that same agreement we said we would install a unit but as it turns out we do not feel it would work, though the EPA does. We found, as did the EPA, that the cost to install the Electrostatic Precipitator would be $9,000,000 for a dual alkaline system and would cost $1,400,000 a year to operate. A once-through system would cost about $6,000,000 to install and cost $2,000,000 a year to run. It was also stated by the manufacturer of the Electrostatic Precipitator in their contract that they could not guarantee the unit they were proposing would take care of the problem. The Dry Scrubber System would cost $11,500,000 and cost about $350,000 a year to maintain. We still would have to find a way to dispose of the waste material. The American Brick Company is worth $2,750,000 to $3,000,000 and has had $140,000 to $200,000 after-tax profit over the last 5 years. It is obvious with the above figures that American Brick Company would have an almost impossible time financing this without some help from the Small Business Association.

In review, the American Brick Company has cooperated with all EPA personnel and has tried every invention it could get its hands on. We are advised by our engineers that with the exception of the Dry Scrubber, none of these would work. The dry scrubber has possibilities but there is still the problem of collecting the material and the cost is questionable.

We offered to try to test a dry scrubber (new invention) to see if technology in this field is the direction to go. The EPA said they would agree to let us test if we do three things. One, agree to a protocal of a test and dates (we generally agreed to this). Two, to accept a $1,000,000 fine for previous destruction of the atmosphere and for not putting in the Electrostatic Precipitator that was agreed upon in the 1978 order (we did not agree), and three, that we will engineer and order the unit we are testing under their time schedule (We cannot agree until we see if it will work and if we can afford it).

It is obvious with the abaove statements that it would be impossible to run any plant after paying the $1,000,000 fine. We asked for a smaller fine. The EPA agreed to a schedule of a test (the schedule is printed below) and a $50,000 fine.

Schedule

May 1, 1980	Make test at Riverdale, Illinois plant (Completed)
June 30, 1980	Have test results and evaluation and start engineering. (Completed)
June 30, 1981	Award contract (It makes no difference if the unit is too expensive or doesn't work).
Apr. 30, 1981	Complete construction
July 12, 1982	Have unit in compliance.

Munster

Close Munster plant. (Munster is closed pending something being settled with the EPA.

Feb. 28, 1982	Give out contracts.
Sept. 30, 1982	Complete construction.
Dec. 15, 1982	Have unit in compliance.

There is another hooker involved. In August 1979 a law was passed by the EPA (120, 42 U.S.C. Sec. 7420), that any plant not in compliance at the time the law is put into effect will be fined on the basis of what the company saved by not putting in the equipment. Even if we were testing and we got notice, it would break us.

You can see that a small company, with the existing laws and regulations, cannot survive. How can you make laws that are impossible to conform to and which will destroy the country's economic position? We all need help, both you and I.

We suggest that Congress pass a regulation or law that would allow a small company a temporary variance in case there is difficulty with technology or financial feasibility. It is impossible for small business manufacturers to adhere to the existing laws without going broke.

We also suggest that Congress pass a regulation or law that would allow a small company a permanent variance in a case where the technology was not available or the economics were so great that the company would be forced out of business. The only exception to not giving the variance would be if the Environmental Protection Agency could prove with actual facts that the small company is a major factor in destroying the health of human beings.

It is also suggested that a procedure be estalbished for small companies to average over a week, month or year the amount o pollution being emitted. In our case we burn our brick over a 60 hour period 30 to 35 times a year and have trouble in only the last 30 of the 60 hours. We are being treated like we are putting pollution out 24 hours a day, 365 days a year.

Please held the small manufacturers by considering the above suggestions.

Fact Sheet

Following is a resume of the facts about American Brick Company's pollution troubles:

A. American Brick Company is the only common brick plant left in the country (historical significance).

B. American Brick Company has two plants:

1. Munster, Indiana. Plant started in 1905, has been shut down temporarily under Consent Agreement. 125 people now on unemployment. Production capacity 300,000 brick a day.

2. Dolton, Illinois. Started 1885, production 300,000 brick a day. Employs 125 people.

3. These plants are the oldest union plants in the country.

4. Employ 85% minorities.

C. We supply 25 to 30% of all brick shipped to the 16-county area around Chicago.

D. If both plants shut down, we estimate the following will happen:

1. 260 people directly unemployed at the plants.
2. 2,000 bricklayer jobs could be eliminated.
3. 50,000 people will be affected directly.

E. Breakdown of brick plant closings in surrounding states

State	No. Plants 25 years ago	No Plants Now
Ill.	20	4
Ind.	15	5
Minn.	3	1
Mich.	3	1
Wisc.	8	1
	49	12

Fact Sheet - Page 2

F. What has American Brick Company done to solve the problem:

1. Changed from coal to oil to natural gas
2. Put filter on top of kiln (continuing to do so)
3. Put after-burner on top of kiln (clinker brick) (continuing to do so)
4. Tried bag house - unsuccessful
5. Wet scrubber - both unsuccessful and expensive
6. Wet Electrostatic Precipitator - unsuccessful and expensive.
7. Tried dry scrubber with bag houses (lime). It looks like it works but the cost is $11,500,000 and would cost $350,000 a year to operate.

G. American Brick Company is worth $2,500,000 to $3,000,000 and an average profit of $200,000 a year.

I. In order to find time for a solution American Brick agreed with the Federal EPA under a consent order in the Federal Court to the following (If we hadn't agreed we could have been fined $1,000,000 and shut down).

1. Agreed to a $50,000 fine
2. Temporarily closed Munster
3. Agreed to the following time schedules:

Riverdale	
May 1, 1980	Make test (completed)
June 30,1980	Result of test to EPA (done)
June 30, 1981	Award contract for pollution equipment
Apr. 30, 1982	Complete project
July 12, 1983	Be in compliance

Munster	
Feb. 28, 1982	Make contract
Sept. 30, 1982	Complete project
Dec., 1982	Be in compliance

WHAT CAN YOU DO TO HELP?

1. Pass a regulation or law that would allow a small company a temporary variance in cases where there is difficulty with technology or financial feasibility.

2. We also suggest that Congress pass a regulation or law that would allow a small company a permanent variance in a case where the technology is not available or the costs are so great that the company would be forced out of business. The only instances in which the Agency would not give the variance would be those in which the Environmental Protection Agency could proove with actual facts that the small company was a major factor in destroying the health of human beings.

3. It is also suggested that a procedure be established for small companies to average over a week, month or year the amount of pollution to be emitted. In our case we burn our brick over a 60 hour period 30 to 35 times a year or 1800 hours a year. We have possible trouble in the last 30 hours of burning, or 900 hours a year. If we are over in any one hour, we are treated as though we were over 24 hours a day, 365 days a year.

ADDITIONAL QUESTIONS FOR MR. ROBERT CAREY:

Mr. Carey, in your testimony you focused on the problems that you have had with EPA's Clean Air regulations. However, your encounter also required considerable contact and negotiation with EPA's regional office in Chicago. Could you tell me how you would rate EPA enforcement officials in terms of attitude, inspection practices, and any other aspects of your case that you think appropriate?

In answer to the above question Senator Percy, I would like to put into my own words the feeling I have had about the EPA over the last four years.

The feeling I have when I sit with a group of the Region #5 Federal EPA people is that I am a little guy sitting in front of five or ten giants that have no idea of my problem nor do they give a damn. In fact the only term I can use is that they are a bunch of overeducated eggheads that have no logic nor have any concept of how to deal with a problem except to say "Do it or shut down, no matter if it works or if it costs so much that you go broke". Their attitude has been nothing but "Industry is the enemy and industry can do no right and they are not to be trusted". We have had said to us on two occasions "You are too small to fight us, why don't you give up? We have unlimited amount of money and personnel to get rid of you so just give up". Senator, after statements like the above ones all day I decided I'd had it. I flew to Washington on my own and started to knock on doors. I have to admit I didn't think I would get anywhere but to my surprise I saw a lot of Senators and Representatives personally. In two days I actually saw Rep. Henry Hyde, Rep. Martin Russo, Rep. Adam Benjamin, Rep. Dan Rostenkowski, Senator Lugar and I saw your aide. I couldn't believe I could see this many people in such a short time and they listened to our problem. It might sound corny Senator, but I had an occasion to go over to the Lincoln Memorial and I am telling you we have the greatest country in the world.

I hope this country stays that way. Because the way I feel now is that you have an Agency that has gotten so much power and has become so big that we are losing the checks and balances that our forefathers gave this nation. When an individual of the EPA Agency can say to you "Do it or shut down, you are guilty", we are in trouble. We have fought this not only so we can stay in business and keep our men working, but also we feel this country is getting threatened by a few individual people who are doomsday oriented. When we had people come out to inspect us, we were very courteous and gave them all of the information they wanted. Their attitude has been not to trust us. Their attitude is we are wrong.

The last point I would like to make is that at no time did we have any dealings with anyone who had any concept of finance. We dealt with attornies from the EPA where we actually had to show them that spending 11 million dollars (borrowing it at todays rate) with a company that is worth $3,000,000 and only making $200,000 a year was impossible. We had to explain to them how you make a loan. We run an industry and have to know this. "They are running us, shouldn't they know this too?" It is ludicrous that our industry is now being run by Agency people who have no concept of manufacturing, finance or business. It is no wonder manufacturing industries are in trouble in this country.

STATEMENT OF ARCHER DANIELS MIDLAND COMPANY

Mr. Chairman, ladies and gentlemen, good morning. My name is Richard E. Burket, and I am here today on behalf of the Archer Daniels Midland Company of Decatur, Illinois. For those of you who may not be familiar with ADM, let me just say that we are one of the largest processors of agricultural products in the world. Our home base is in Illinois; but we operate at over 150 locations throughout the United States, and we employ over six thousand people.

My company has asked me to appear here today to discuss certain issues in connection with these very timely hearings on regulatory reform. Although I easily could spend several hours testifying about dozens of unnecessary and burdensome regulations imposed upon ADM, and other companies, time limitations preclude such a lengthy discussion. Therefore, I will concentrate on the unnecessary burdens imposed upon business by just one agency - the OFCCP - the Office of Federal Contract Compliance Programs of the Department of Labor. OFCCP administers a variety of laws, orders and regulations which apply to more than 300,000 government contractors, including ADM. It seeks to foster equal employment opportunity, primarily through its concept of "affirmative action."

OFCCP's goal is, of course, laudable, and ADM wholeheartedly supports equal employment opportunity for all. The reason for such support is simple. ADM wants to employ the best possible people, regardless of race, sex, creed or handicap, because

that is the best way for our company to be successful and profitable. In short, it just does not make good business sense to erect artificial barriers against the employment of qualified people - we need such people. So far, so good, we and OFCCP are in agreement.

We part company, however, when we come to OFCCP's concept of "affirmative action." From our own experience, and from experiences shared with other companies, it is obvious that OFCCP translates affirmative action into one word - numbers. It requires truly unbelievable amounts of statistics and numbers from businesses. Numbers certainly have their place, but they never tell the whole story. Why? Because in this area we are dealing with <u>people</u>, and people cannot be quantified like fungible goods such as corn or soybeans. It is apparent to us that OFCCP has forgotten this fundamental truth.

In addition to its failure to recognize that its constituents are not numbers, but people, OFCCP also forgets that businesses are comprised of people, too. We have our faults, true. But the vast majority of us firmly believe in equal employment opportunity, and we constantly seek ways to improve employment opportunities for everyone in our society. <u>That</u> process, people helping people obtain employment, is true affirmative action - a numbers game isn't. And that process is being stifled by OFCCP's rigid, bureaucratic approach to its duties. The process is being stifled because OFCCP's approach is accusatory and punitive, and they thus turn off the very people who have the most to do with improving employment opportun-

ities - the human resources personnel who deal with daily employment decisions, as well as with OFCCP.

Let me give you just a few examples of some of the problems we have encountered with this agency. I think you will agree that they show an agency so reliant upon bureaucratic forms and processes that it has forgotten how to deal with people, or with common sense.

More than a year ago, ADM was notified that its Decatur facilities would be reviewed by OFCCP - that review, by the way, still has not been completed. We expect to be reviewed periodically, of course, but the reason for this review was ludicrous. More than two years before the review began, one of our employees was terminated. The employee filed a grievance under one of our collective bargaining agreements, stating that he had been improperly terminated. His union took the grievance into arbitration, and it defended the employee vigorously. Yet the neutral arbitrator ruled that the termination was justified. The employee then filed his complaint with the OFCCP, which ultimately commenced its review of ADM due to that complaint. This was done even though the complaint had not been filed within the appropriate time period set forth by the OFCCP's own regulations. Needless to say, we wound up justifying this employee's termination a <u>second</u> time, because OFCCP would not accept the arbitrator's decision on this complaint. I also am aware of another OFCCP case in which a review was instigated by, and relief was sought for, employees who had filed federal

court lawsuits which either had been fully litigated, were being litigated, or which had been dismissed due to settlement.

These incidents graphically demonstrate one totally unnecessary aspect of OFCCP's activities - complaint processing. Employees already have so many forums in which to litigate their complaints - EEOC, which practically duplicates OFCCP's work, NLRB, local and state human rights and labor agencies, OSHA, the courts, arbitration - that still another forum such as OFCCP is redundant. At the very least, OFCCP should be compelled to defer to the decisions of those other forums, so that an employer does not wind up endlessly defending itself from the same charge.

When our review began, we were confronted with three different investigators - one for each of our Decatur facilities. Unfortunately, this meant that we had to assign at least three (and often more) employees to the review to assist the investigators - an unnecessary expense. More importantly, our personnel could discern little common ground in the methods of the three investigators. This was particularly distressing, because we had prepared our affirmative action programs in the same fashion for each facility. And, as luck would have it, the investigators drifted in and out of the review process. Thus, we were forced to undergo essentially three separate investigations, based on at least three separate methodologies, when one investigation covering all three facilities should have been conducted.

Today we still are reaping some of the bitter fruits of these inconsistent investigations. Our personnel department has re-written several sections of our program many times in response to differing OFCCP pronouncements regarding an acceptable format. I also should point out that these pronouncements usually come in the form of commands to submit additional materials or revisions within one week or less, with threats of dire consequences if we cannot comply. Such demands have no regard for the many other pressing matters facing the Company, and they stand in stark contrast to OFCCP's consistent failure to meet deadlines established for providing the Company with information or documents. Indeed, one of these short-notice demands by OFCCP was made during the week prior to Christmas, which I believe underscores the failure of this agency to understand that it is dealing with people, not machines.

This brings us back to numbers, and OFCCP's misuse of them. OFCCP regulations require an employer to establish an "availability" figure for minorities and females in each of a number of "job groups." The availability percentage then is compared to the percentage of female and minority employees in those groups, and employers are supposed to set numerical goals where the minority or female percentage falls below availability. If that sounds easy, let me assure you that it is not.

The chief culprit is the so-called "8-factor availability analysis" mandated by OFCCP regulations. This requires an employer to consider <u>at least</u> eight listed types of avail-

ability figures in determining a single availability figure for each job group. Yet many of the eight factors bear little relationship to true availability, and often some figures are unobtainable. This is especially true for a company such as ours, which has a number of highly specialized jobs requiring technical knowledge. The state of the art just does not permit accurate determinations of the persons who might be available for such jobs in central Illinois.

As a result, we have been negotiating with OFCCP regarding availability figures for months. We have been required to recompute availability figures for just one of our plants three times, in response to varying OFCCP interpretations of the 8-factor analysis. We have not been able to reach agreement on certain availability figures, because OFCCP insists that female availability for some of our most demanding jobs is equal, or nearly equal, to the percentage of all women who live or work in the Decatur area even though accurate availability figures cannot be obtained for those jobs. Yet our experience with these jobs shows that female availability is far below OFCCP estimates. The basic problem is that OFCCP insists upon substituting its subjective judgment regarding availability estimates for our good faith estimates, even though OFCCP lacks any expertise in our specialized business. Some simpler method of determining availability must be found quickly, because the entire goal-setting process depends upon it. There is, quite clearly, simply too much room for confusion and for wildly

differing interpretations, even among OFCCP personnel, in the present process.

Another problem arises when one negotiates, or attempts to negotiate, with OFCCP. Frequently new faces appear on their team, while old ones fade away. The result? Inconsistent positions on issues, which often require the Company to re-do work it has already performed to meet prior demands. In our case, this procedure reached its zenith when a new negotiator reopened an issue we believed settled. His response when informed of our belief was to ask if we had such an agreement in writing. I am informed that such negotiating "tactics" are not uncommon at OFCCP. Under such circumstances, can there be any doubt that our skepticism about this agency is justified? I think not.

Before I summarize, let me say just a word about the cost of all this activity. Our personnel have spent more than 1500 hours of time on this OFCCP review. Our attorneys also have spent a great deal of time assisting us. We have copied thousands of documents and spent many tens of thousands of dollars. I am sure the Government also has spent a great deal of time and money on our review. For what? At present, nothing, because our review continues. I do know, however, that this time, effort and money would have been far better spent by allowing our personnel to deal with people, not paper. And I think much more could have been accomplished in the employment area by my company in the last year if our attention had not been disrupted by OFCCP's demands for paper.

I have recounted these incidents, and the perceptions of our personnel, to give you just a feel for the problems inherent in OFCCP's interpretation of its mandate. It boils down to an absolute distrust and lack of knowledge of business and the people in it, coupled with an almost holy conviction in the righteousness of OFCCP. Obviously, such an approach does not foster a cooperative effort to eradicate the very real problems of discrimination which exist.

Additionally, insistence upon extremely detailed written programs, mind-boggling statistical analysis and complex compliance reviews further detracts from employers' efforts to advance the employment opportunities of protected groups. The time and effort spent in such paper-pushing activities would be far more effective if spent in "hands-on" work with employees, applicants and community groups. If you can give just one message to OFCCP, tell them not to depend on the paper and numbers, but to look for good faith efforts and to help employers with their efforts. That message will do more to improve employment opportunities than debarments, fines and lawsuits ever can. As I have tried to point out, business needs partners in its equal employment efforts, not adversaries. Until that fact is recognized, I fear we will remain trapped in a bureaucratic cage of paper and red-tape. Please help us, help us by tearing down that cage, so that we can get on to the more important activity of helping all kinds of people find employment.

Thank you.

TESTIMONY OF HARVEY J. WEXLER

BEFORE THE ENERGY, NUCLEAR PROLIFERATION

AND GOVERNMENT PROCESSES SUBCOMMITTEE

JULY 2, 1981

PEORIA, ILLINOIS

Mr. Chairman, I am Harvey J. Wexler, Senior Vice President-International and Governmental Affairs, Continental Airlines. I want to thank you for the invitation to testify today in Peoria, Illinois---in the heartland of our industrial midwest.

Continental Airlines is proud to serve Peoria. Our service here began February 28, 1977. We have two flights per day to and from Kansas City and Denver with convenient connections to various cities in California, Colorado, Wyoming, the Pacific Northwest, Arizona, New Mexico, Texas and Las Vegas. This is a broad region, embracing both important business and tourist destinations. We also offer services beyond the continental United States to Hawaii, Fiji, New Zealand and to Australia---a continent with known natural resources second only to ours.

Continental Airlines believes its services are important to the people of this area. We know Peoria is important to us. We hope the feeling and understanding here is mutual. As a matter of fact, 25 percent of all our flights to and from the State of Illinois serve Peoria exclusively. This must say something. We are not a philanthropic organization, and hence it says that we at Continental regard Peoria as an important point in our system.

Deregulation of the U. S. air transport industry has produced a number of major changes, and it can be expected to do so more and more as time progresses. Predictably, deregulation has produced a far greater competitive environment---a dramatic change in the ground rules, so-to-speak. There is an absolute necessity to alter the ways and means we have done business for forty years preceding the Deregulation Act of 1978. Failure on the part of any of us in the industry to adjust will ultimately bring about the Darwinian principle of survival of the species. The successful will survive. The losers will fade into oblivion.

Until 1978, the legislative framework of our industry was one of limited entry and protected franchises. The corollary, of course, was oversight and control of pricing by the CAB. Today, under virtually free-market conditions, pricing is left to the competitive marketplace.

The airlines have historically been considered a capital intensive industry. Relatively speaking, they still are. But the industry has become increasingly "labor intensive". Today labor costs account for about 40 percent of total operating expenses. We are, after all, a service industry.

The percent of labor costs to total costs emphasizes the impact which the emergence of wholly new low cost airline corporations has had on the established airline system. They are increasing in number, and creating an ever-increasing competitive pressure on the established carriers.

The new small airlines have less restrictive work rules, lower pay scales --as much as 50% lower-- and substantially higher employee productivity. Partially as a result of competitive inroads from these carriers over the last 18 months, most of the trunk airlines, including Continental, have suffered substantial losses and have been forced to drop out of markets, reduce the size of their operations and furlough substantial numbers of employees. At the same time, the new and smaller carriers have earned large profits and experienced rapid growth. If present trends continue, the trunk carriers will continue to face severe competition from these aggressive low cost carriers.

The solution for the established airlines is to develop a means for substantially increasing employee productivity. The alternative --continuing losses and further employee furloughs as the routes of the established carriers continue to be invaded by the new, high productivity airlines-- is unacceptable.

Continental Airlines is convinced that productivity gains can be achieved only with the cooperation of our employees. Our work force must have an incentive to increase productivity in order to compete effectively . What better incentive can there be than to share in the profitability and value of the company. Accordingly, we have evolved an ESOP (Employee Stock Ownership Plan). It was initiated and organized by our employees themselves. It was their own decision. Management concurred only after the employees overwhelmingly voted for it, and they voted 96 percent in favor of it.

The ESOP will provide the incentive for Continental's employees to work with management to achieve the productivity levels necessary to make it a highly viable and competitive airline. Studies conducted by the Kelso organization and others have shown that the adoption of an ESOP has a positive effect on a company's productivity and profitability. Continental has done its own study to assess the earnings improvement from increases in productivity that might be achieved as a result of implementation of the ESOP. For the two groups of employees included in the study, the pilots and the non-union employees, it is anticipated that productivity improvements of at least 8 percent will be achieved within five years. Thus, for example, the Chairman of the Master Executive Council of ALPA

has agreed to form a joint committee to explore ways of achieving a significant improvement in pilot productivity. It is anticipated that the hard hours flight time (actual flying hours) can be increased from 46 hours per month to at least 55 hours per month within a few years. This would result in a 20 percent increase in productivity for the pilots. Since the pilot payroll accounts for almost 30 percent of the total Continental payroll, this increase in productivity alone accounts for approximately three-fourths of the total productivity improvements expected to be achieved by the fifth year.

We have included only increased productivity for the pilots and non-union employees in our study since both groups at the time of the study had already committed to participation in the ESOP.

When the ESOP is implemented, we estimate that productivity for UFA and the IAM members would increase such that the company's productivity for all employees will improve by approximately 10 percent by 1986, resulting in earnings per share of $2.05 in 1986.

We believe that the foregoing estimates of improved productivity are well below what will be achieved when the ESOP is implemented. For example, we would anticipate that the previously mentioned increase in hard hour flight time on the part of the pilots will be achieved in two or three years rather than the five years projected in the study. Moreover, significant additional improvements in pilot productivity are likely over the next six years. The conservatism of our forecasts is borne out by the results reported by other companies with employee stock ownership plans. An independent survey of 72 ESOP companies the 1979 United States Senate Committee on Finance Survey disclosed, among other things, productivity improvements resulted in net profit increases of 157 percent over a three-year period subsequent to the implementation of their respective ESOPs. Our projections are substantially more modest than the results of this actual experience. Moreover, the extent of employee ownership under the Continental plan is far greater than that in the companies surveyed. Therefore, the incentive for improved productivity should be even greater for Continental's employees than for the employees of these other companies.

If we are all behind this program to win---how can we lose? You have all seen our advertisements, I'm sure. Behind that "Proud Bird" are 11,000 very proud people. That may sound a bit corny, but I can say without hesitation, it is absolutely true.

Just one closing remark: I have noticed that your auto license plates in Illinois state "The Land of Lincoln". I can't resist the temptation to paraphrase Lincoln's famous statement; namely, ESOP represents a program "of the employees, by the employees and for the employees" to the benefit of our customers and shareholders.

Thank you.

NOTE: Attached respectively as Appendices A & B are Senate Resolution 116 and a letter by the House Task Force on Industrial Innovation and Productivity.

APPENDIX A

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, FIRST SESSION

Vol. 127 WASHINGTON, MONDAY, APRIL 27, 1981 No. 61

Senate

SENATE RESOLUTION 116—RESOLUTION RELATING TO PROPOSED MERGER BETWEEN TEXAS INTERNATIONAL AIRLINES AND CONTINENTAL AIRLINES

Mr. LONG (for himself, Mr. DECONCINI, Mr. DOMENICI, Mr. LAXALT, Mr. HAYAKAWA, Mr. INOUYE, Mr. SIMPSON, Mr. JOHNSTON, and Mr. CRANSTON) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. Res. 116

Whereas, Texas International Airlines is attempting to acquire control of Continental Airlines;

Whereas, the employees of Continental Airlines have overwhelmingly voted to forego a portion of their future wage increases in order to acquire majority control of their company with an employee stock ownership plan;

Whereas, the issue of whether Texas International or the Continental Airline employees should prevail in this matter is already the subject of Federal District Court litigation in California;

Whereas, such litigation should be protective of the ownership rights and interests of both parties after receiving relevant testimony and hearing legal arguments; and

Whereas, the Civil Aeronautics Board is scheduled to conclude its consideration of Texas International's merger proposal, following full evidentiary hearings in August 1981: *Now, therefore, be it*

Resolved, That the Senate of the United States of America urges (1) the Civil Aeronautics Board and other Federal agencies to refrain from any extraordinary action with regard to the proposed merger between Texas International Airlines and Continental Airlines in order to permit the Federal courts to make such determinations as are appropriate for the protection of shareholders, and (2) the Civil Aeronautics Board to proceed with consideration of such proposed merger under its regular procedures which are scheduled to be concluded in August 1981.

● Mr. LONG. Mr. President, I am pleased to join several of my colleagues today in introducing a resolution urging the Civil Aeronautics Board (CAB) to carefully consider proposals concerning the future of Continental Airlines. Two competing groups are currently attempting to acquire a controlling interest in this air carrier. The first is Texas International Airlines; the second is the employees of Continental Airlines.

The issue of the merger of Texas International Airlines and Continental Airlines is presently scheduled to be the subject of full evidentiary hearings before the CAB. In addition, a case is pending in the Federal district court in California concerning which party should prevail in this matter.

On Wednesday, April 29, the CAB has scheduled an extraordinary proceeding to hear oral arguments concerning the protection of Texas International Airlines as stockholders in Continental Airlines. Texas International currently owns 46.3 percent of Continental's outstanding shares. CAB resolution of this issue at this time may determine whether the Continental Airlines employees will be able to go forward with their plan to establish an employee stock ownership plan to acquire a majority interest in their company.

This resolution does not suggest that employee ownership is preferable to the alternative proposed by Texas International Airlines. Instead, this resolution urges the CAB to follow its normal procedures and proceed with its scheduled evidentiary hearings on this matter, which will be concluded in August of this year.

I would like to express my personal support for this courageous group of Continental Airlines employees who are attempting to buy their company. Federal law encourages companies to form employee stock ownership plans (ESOP's) to finance their operations in such a way that employees will own a stake in the company for which they work. This law is the result of more than a dozen pieces of legislation which I have authored over the past 8 years. These employees have given that idea a new twist. They are offering to forgo a portion of their future pay raises—many of which have already been negotiated—to invest in company stock. With that pledge, and with commitments from the company, their ESOP should be able to borrow the money now to buy the necessary shares.

This sale of new stock would bring the company a new infusion of equity, allowing it to draw down existing bank loans and reduce its interest payments. At the same time, unlike proposals to slash wages, the ESOP does not penalize employees. Instead, it gives them an ownership stake in their company, and insures them a larger share in the fruits of their labor.

These employees may also have shown us a new method for revitalizing the American economy. We need to stimulate investment by "supply side" tax policies. The U.S. savings rate, however, is the lowest of any major industrialized nation. To stimulate investment, we also need to spend less now on consumer goods and invest more in capital goods. By taking part of their future wage hikes in stock, these employees are showing us a way to help break the inflationary spiral which is making income gains increasingly less valuable.

Their hope is to use their ESOP to convert the "sweat equity" that they have invested in their company into true equity ownership. These employees have an opportunity to create a showcase airline—one in which the employees themselves become the major shareholders. If they are successful in their efforts—and I hope that they will be—they may well become a model airline—one to which other carriers will look when seeking a formula for success.

In today's deregulated environment, air carriers are struggling to overcome the risks and seize the opportunities created by this new environment. These employees are not asking for protection from competition; nor are they seeking a Government handout. What these employees want is a chance to make it on their own. They feel that they would be best prepared for their fiercely competitive and challenging future if they were to face it as a 51 percent employee-owned company. I expect that they are right. Several studies have shown that companies with substantial employee ownership tend to be more productive and more profitable than those without.

Personally, I would prefer to deal with a company that is substantially employee owned. I think the service would be better. In addition, as any manager can attest, it is the motivated, on-line employee who generally comes forth with the new idea, the new approach, or the new system that can better deliver the product or service.

Airlines are extremely labor-intensive; in fact, it is the Continental Airlines employees themselves who have largely borne the burden in building this fine company. This highly trained employee group realizes that productivity has very little to do with how hard they work, at least in the sense of physical effort. What counts is how well they work. These employees recognize that ownership can make a substantial difference; thus, they are proposing an employee stock ownership plan to make their company stronger. They feel that their ESOP will create an environment more conducive to productivity and growth. They anticipate an improved interest in work, in work quality, and in job satisfaction.

It is my hope that employee-owned airlines will become a viable alternative to mergers. Whenever the Federal Government is involved in assessing competing plans for providing air carrier service, employee stock ownership arrangements should be viewed as a preferred alternative.

I applaud the Continental Airlines employees on their imaginative and courageous efforts to acquire their company. I hope that they are successful and that their success will be an inspiration not only to other airlines but to other industries as well.●

House Task Force
on Industrial Innovation
and Productivity

CONGRESS OF THE UNITED STATES

2446 Rayburn House Office Building | Washington, D.C. 20515 | (202) 225-0855

April 28, 1981

The Honorable Marvin S. Cohen
The Honorable Gloria Schaffer
The Honorable George A. Dalley
The Honorable Elizabeth Bailey
The Honorable James Smith
Civil Aeronautics Board
Washington, D.C. 20428

Dear Members of the Board:

The employees of Continental Airlines have just voted by an overwhelming margin -- 8,932 to 359 -- to establish an Employee Stock Ownership Plan which would buy a controlling interest in the airline. We believe that the plan of Continental's employees is a significant milestone in the renewal of American business through increased productivity and capital formation.

Earlier this year, Texas International Airlines sought permission from the Civil Aeronautics Board to purchase 48.5% of the common stock of Continental Airlines contingent on placing the stock in a voting trust. The CAB granted permission on the terms requested, and Texas International purchased the stock. Now Texas International has filed a petition to modify the CAB's order, entered at its own request, for no apparent reason other than to kill the Continental Employee Stock Ownership Plan.

We are writing as members of the House Task Force on Industrial Innovation and Productivity to urge that the Board deny Texas International's petition and allow the employees to buy control of Continental.

During the 1970's Americans reduced the amount of savings which they devoted to business capital formation. The Congressional Budget Office has pointed this out as a major factor in declining productivity.

The Continental Employee Stock Ownership Plan would counter this trend with a practical demonstration of supply-side economics: Continental's workers propose to allocate $185 million -- 15% of their pay over the next four or five years -- to doubling the airline's capital stock. The employees' investment would leave the company in an excellent position to buy more efficient, innovative equipment at the appropriate time. (To date, Texas International has not proposed to add anything to Continental's capital stock. Rather, it proposes adding $93 million in debt to finance the cost of its takeover.)

Efficient workers are as important to productivity as capital formation. The American airline industry can take one of two

courses in order to make more efficient use of labor. Texas International has effectively pursued one course -- spinning off the assets of its parent corporation to start New York Air, a new carrier with less restrictive work rules and lower wages.

If the airline industry as a whole pursues this course, the nation will have to bear substantial costs — in the short run, unemployment compensation and other payments (potentially billions of dollars under Section 43 of the Airline Deregulation Act) to the employees of existing carriers; in the long run, a costly series of futile strikes by unions alarmed at their shrinking share of the industry base (see example of the United Mine Workers).

Employee ownership of Continental would offer the airline industry a second course toward a more efficient work force, at less cost to the nation than Texas International's course. The President's Commission for a National Agenda for the 1980's has singled out Employee Stock Ownership Plans as an important incentive to worker cooperation with management and greater productivity.

Everyone involved in the debate on airline deregulation -- proponents and opponents alike -- agreed that deregulation must be effected by a period of transition. Everyone agreed that the carriers and their employees, nurtured in a hothouse of government regulation for forty years, could not be expected to adjust overnight. For example, the Senate Commerce Committee reported that:

> A crucial element of the present bill is the gradual phasing in of its key provisions. The Committee accepted without controversy the principle that a transition period should be provided to airline companies in order to allow them time for adjustment before the full force of the new regulatory system is felt.... The Committee believes that Congress, having acted to prevent the normal free market evolution of the industry, now has a duty to the industry and its employees which would not exist if such action had not been taken. In order for Congress responsibly to change its policy now and require the industry to move forward to much more competitive market oriented environment, Congress should attempt to minimize the dislocations caused by the change. The change in policy and the temporary dislocations it may cause would not be necessary if Congress had not left in place so long a regulatory framework designed for the conditions that existed in the 1930's. (Amending the Federal Aviation Act of 1958, Senate Report 96-631, 95th Congress, 2nd Session, February 6, 1978.)

The employees of Continental have developed a plan pursuant to which they are willing to sacrifice 15% of their earnings and will commit to working harder and smarter to increase their productivity to

insure their airline's successful transition. Fairness demands that they be given the chance to try.

We ask that the Civil Aeronautics Board give Continental's employees a chance to succeed by refusing to dissolve a standard voting trust which it has required in other merger cases -- denying special treatment to Texas International.

Sincerely,

PAT SCHROEDER
LES AUCOIN
JOHN SIEBERLING
ROBERT DORNAN
GEORGE BROWN
EDWARD J. MARKEY
NORM DICKS
JOEL PRITCHARD
RICHARD OTTINGER
THOMAS J. DOWNEY
HAROLD HOLLENBECK
MICHAEL LOWRY
ROBERT LAGOMARSINO
CECIL HEFTEL
BARRY GOLDWATER, JR.
DON BAILEY
EUGENE ATKINSON
WES WATKINS
GERALD SOLOMON
DON CLAUSEN
TRENT LOTT
MORRIS UDALL
GLENN ENGLISH
WILLIAM BROOMFIELD
BERKLEY BEDELL
DON GLICKMAN
MARTIN O. SABO
RAY ROGOVSEK
TOM LANTOS
BOB STUMP
JOHN CONYERS, JR.
ED JENKINS
JAMES J. HOWARD
STANLEY N. LUNDINE
AL SWIFT
ANTHONY TOBY MOFFETT
TOM EVANS
DON EDWARDS
BOB EDGAR
BOB EDGAR
RICHARD A GEPHARDT
ROBERT A. YOUNG
RON WYDEN

PREPARED STATEMENT OF RICHARD CLOYD

My name is Richard Cloyd, manager of public information and governmental affairs of Keystone Consolidated Industries, Inc. We are the second largest industrial employer in central Illinois, and our company has facilities in seven other states. Sales last fiscal year were slightly under 400 million dollars.

We welcome the opportunity to discuss regulatory reform, and believe that this area must be addressed by the Congress as means of rejuvenating the industrial sector and fighting inflation. Regulation has truly been the growth industry of government in the past decade, and it is far past the time when the extremely rapid growth of regulation should have been brought under control.

In an attempt to address the extent of regulation, the Council of Wage and Price Stability in 1976 studied the impact of regulation on the steel industry. They found over 5,600 regulations administered by 27 different government departments and agencies. This did not include state regulations and the secondary effects of federal regulations (Library of Congress Card Number 76-52773).

We're sure that similar regulatory burdens could be found for just about every other industry as well. This represents, as you know, an enormous cost to any business to gather, report, and comply. We often find overlapping requests for information from different departments and bureaus. We have received packing crates full of forms from the department of commerce for reporting on production, inventories, and the like. We doubt if these are of any

VALUE, AND THEY ARE EXTREMELY COSTLY TO COMPLY WITH. MANY DOCUMENTS CARRY THE THREAT OF LEGAL PENALTIES IF DEADLINES AND PROCEDURES ARE NOT MET.

WE BELIEVE THAT ONE ANSWER TO THIS OVERREGULATION IS EMBODIED IN SENATE BILL 1080--THE REGULATORY REFORM ACT. WE SUPPORT THE PASSAGE OF THE BILL IF IT IS AMENDED TO REQUIRE THAT MAJOR RULE DETERMINATION AND REGULATORY ANALYSIS MUST BE SUBJECT TO JUDICIAL REVIEW.

WE ALSO BELIEVE THAT THE WAY TO APPLY THE SUNSET CONCEPT TO REGULATORY REFORM IS TO SUNSET INDIVIDUAL PROGRAMS, RATHER THAN TO THE AGENCY AS A WHOLE.

THE AMERICAN IRON AND STEEL INSTITUTE, OF WHICH WE ARE A MEMBER, HAS SUBMITTED A REVIEW OF CERTAIN REGULATIONS TO THE VICE PRESIDENT'S TASK FORCE. FOR YOUR INFORMATION AND ACTION, WE ARE PROVIDING TWO COPIES OF THE COMPLETE REPORT ON REGULATIONS WHICH ARE OF GREATEST CONCERN TO THE STEEL INDUSTRY.

WE BELIEVE THAT THE GOVERNMENT'S APPROACH TO REGULATION SHOULD BE TO ENCOURAGE THE USE OF PRIVATE SOLUTIONS TO REGULATORY MATTERS. IF GOVERNMENT FINDS A NEED TO SET A STANDARD, LET THE INDUSTRY FIND A CREATIVE WAY IN THE MARKETPLACE TO MEET THAT STANDARD. FAR TOO MANY "COMMAND AND CONTROL" TYPE REGULATIONS, WHICH DICTATE WHAT MUST BE DONE, RESULT FROM THE CURRENT REGULATORY MINDSET IN WASHINGTON.

AS A SPECIFIC EXAMPLE OF OUR RECOMMENDATION THAT THE MARKETPLACE BE THE FINAL DETERMINANT OF REGULATION, WE

SUBMIT THE REPORTING PROCEDURES REQUIRED BY THE DEPARTMENT OF ENERGY UNDER THE PROVISION OF THE NATIONAL ENERGY CONSERVATION POLICY ACT OF 1978. OUR COMPANY REPORTS THROUGH THE AMERICAN IRON AND STEEL INSTITUTE ON A QUARTERLY BASIS, AND IS ALSO REQUIRED TO SUBMIT ANNUAL REPORTS TO THE DOE ON ENERGY CONSERVATION ON FORM CS189-C.

THIS REPORTING MUST BE CARRIED OUT FOR EACH PLANT LOCATION IN THE U.S. AND MUST BE ATTESTED TO BY THE PLANT MANAGER AT EACH LOCATION. IT ALSO IMPOSES ON THE PLANT MANAGER THE RESPONSIBILITY FOR NARRATIVE COMMENTARY ON "SIGNIFICANT ENERGY CONSERVATION MEASURES" ADOPTED DURING THE REPORTING PERIOD.

WE CANNOT IMAGINE WHO SITS IN WASHINGTON READING REPORT AFTER REPORT FROM THOUSANDS OF INDUSTRIAL PLANTS ON THEIR ENERGY CONSERVATION MEASURES. WE DON'T KNOW IF THIS IS SOME SORT OF INDUSTRIAL HOMEWORK SIMILAR TO HAVING TO WRITE "I WON'T WASTE ENERGY" 100 TIMES ON THE BLACKBOARD, OR IF SOMEONE ACTUALLY USES THIS INFORMATION. IN EITHER CASE, IT IS A COLLOSAL WASTE AND SHOULD BE DISCONTINUED IN ITS ENTIRETY.

WE ALSO FIND THAT WE RECEIVE DUPLICATE REQUESTS FOR THE SAME INFORMATION FROM A VARIETY OF DEPARTMENTS. EACH DEPARTMENT WANTS THE INFORMATION ON ITS OWN FORMAT, AND THE COST OF COMPILING THE INFORMATION AND FILLING OUT THE FORMS IS SIGNIFICANT.

We suggest that much of the information requested is available in SEC reports and could be found in their Washington files. If the information other departments seek is that important, they should find a way to retrieve it from existing documents. If they cannot justify the cost of obtaining that information, we do not see why that cost burden should be shifted to us so we end up doing the clerical work on information which is of no value to us.

Other examples of forms which are expensive and time consuming to complete include:

FTC MG-4 Financial Statement (Quarterly)

Census Bureau MA-100 Survey of Manufacturers (Annual)

Census Bureau M3 (Monthly)

U.S. Department of Labor Monthly Report on Labor Turnover

U.S. Department of Labor Occupational Report 330-0 (Annual)

National Alliance of Business Quarterly Report

Fair Employment Practice Commission Semi-Annual Report

I'm sure we fill out and return other forms too numerous to mention, but these are just a few examples of the regulatory paperwork that is strangling American business. Your assistance in cutting away this thicket of forms and regulations will be appreciated.

STATEMENT OF

THOMAS D. HOPKINS

ACTING DEPUTY ADMINISTRATOR FOR
INFORMATION AND REGULATORY AFFAIRS

OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION
AND GOVERNMENT PROCESSES

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

JULY 2, 1981

Mr. Chairman:

I am pleased to have this opportunity to discuss the President's regulatory relief efforts. As you know regulatory relief is one of four key components of the Administration's economic recovery program:

- o A stringent budget policy, to reduce the rate of growth of federal spending;
- o An incentive tax policy, to increase after-tax returns and thus promote saving, work, and investment;
- o A regulatory relief policy to eliminate unnecessary and unduly costly regulations and bring efficiency to the overall regulatory process; and
- o A stable monetary policy, to reduce uncertainty and bring inflation under control.

Taken together, these four commitments will go far toward restoring the health of our economy and the well-being of our citizens.

Clearly regulatory relief is long overdue. Regulatory burdens have been mounting at a worrisome rate, and previous Administrations' efforts to restrain them have proved inadequate. As one crude indicator, consider the Federal Register, the daily government publication which contains every new rule and regulation being issued by each federal agency on any given day. In 1955 it contained just over 10,000 pages. By 1976, it took some 50,000 pages to print all these notices. And by 1980 the total Federal Register length had grown to over 87,000 pages. These regulations are issued by some 90 different federal agencies, at a rate of 10,000 actions per year, unsettling statistics in themselves. The cost of complying with these regulations, while difficult to document, is substantial. Murray Weidenbaum, the Chairman of the Council of Economic Advisers, has estimated these costs for 1980 at $126 billion.

Part of our problem is that some regulation is so designed that a clearly sensible objective is achieved in a needlessly costly way; this squanders citizens dollars that could otherwise be used to achieve more safety or whatever is most sought. Yet even when regulation is ideally designed, it remains costly. Available resources are simply insufficient to meet all of society's needs. This distressing fact has taken on renewed importance in recent years as we have watched inflation accelerate and productivity sag.

It is not easy to design sensible regulations. A great deal of detailed information is needed. Because of the risk that the government's regulatory cure may be worse than the disease, and since the necessary information and analysis are likely to be costly, government intervention appears to be readily justifiable primarily when truly hazardous situations arise that market forces cannot be expected to handle. Seen in this light, EPA's past insistence on adopting costly regulations, for example, to control how quiet a garbage truck must be, surely seems a dubious use of federal government authority and the $30 million per year of society's resources that compliance with those regulations cost.

Where government intervention is justified, and certainly it often is, we need far more sensible regulatory strategies than we have had to date. For example, providing more information to consumers and workers -- in such areas as energy, health, and safety -- may be a sound substitute for more coercive regulation. Adequately informed consumers can make surprisingly intelligent decisions -- that is, a regulator might be surprised -- if the government makes sure the facts are available.

And where regulation is needed -- e.g., to limit the harm that a firm's smokestack emissions may cause people living in another state or to correct other such problems that markets cannot properly resolve -- we've often had far too rigid an approach. Performance standards, that put a ceiling on a firm's

emissions of a pollutant but give complete discretion to the firm in deciding how to get the job done, permit firms (and society) to achieve stated objectives at a lower cost than is possible with detailed design standards. The establishment of fees that decline as a firm pollutes less provides maximum flexibility to the firms and eliminates the need for other types of more intrusive regulation. Similarly, creating markets where none existed before -- for example, marketable pollution rights and emission offsets -- is an efficient method of controlling pollution. This is the kind of government strategy that can harness -- not hobble -- private incentives and ingenuity.

It is of course irrational to try to judge regulations in terms of their costs alone without looking at their benefits, but it also is irrational to decree that society must bear those costs without having made one's best judgment that the benefits do indeed justify the costs. We surely need better balanced judgments than we have been getting. And this, in essense, is the spirit that is behind the Administration's regulatory relief efforts.

Let me be more specific on those efforts.

On January 29 President Reagan froze new regulations just long enough to enable his team to sift through the 7,000 Federal Register pages published over the preceding month (40% more than the previous January) and decide which of these so-called Midnight Regulations were unreasonably burdensome. Over 150 new

final regulations -- just from the dozen agencies most directly subject to Presidential control -- that would have become legally enforceable during that 60-day period were caught by this freeze. After review, some 35 were set aside. Some of these regulations were eyeopeners: one would in effect have the Labor Department start setting wages for high paid loggers and R&D professionals, by reinterpreting the meaning of a statute originally intended to protect low paid maids and janitors.

Secondly the President abolished the wage-price regulatory program of the Council on Wage and Price Stability. That program, though having laudable goals, no longer was serving any useful purpose, yet 135 people were still employed to run it, and its reporting burdens were substantial. Indeed the entire agency died June 5, an almost unheard of phenomenon in recent years.

But most importantly, regulatory agencies have been placed on notice that regulation -- both existing and new -- must meet a tougher test than ever before. If a less costly, legally permissible alternative to the regulation could still get the job done, it is going to have to be used. And if even the least costly type of regulation generates more costs than it does benefits to society, that regulation is a prime candidate for elimination.

The means used to get the President's message across are a Presidential Task Force, a new Executive Order, and a different breed of people being named to manage the regulatory agencies.

Presidential Task Force on Regulatory Relief

On January 22nd, President Reagan established a Cabinet-level Task Force on Regulatory Relief. It is chaired by Vice President Bush and includes as members: Treasury Secretary Regan, Attorney General Smith, Commerce Secretary Baldrige, Labor Secretary Donovan, Office of Management and Budget (OMB) Director Stockman, Assistant to the President for Policy Development Anderson, and Council of Economic Advisers Chairman Weidenbaum. James C. Miller III, to whom I report, serves as Executive Director of the Task Force.

The Task Force's basic charter is to:

- o Review major proposals by executive-branch regulatory agencies, especially those proposals that would appear to have a major policy significance or where there is overlapping jurisdiction among agencies;
- o Assess executive-branch regulations already on the books, especially those that are particularly burdensome to the national economy or to key industrial sectors; and
- o Oversee the development of legislative proposals in response to Congressional timetables, and, more importantly, to codify the President's views on the appropriate role and objectives of regulatory agencies.

The President's action in creating the Task Force clearly established regulatory oversight at the highest levels.

Executive Order 12291

To help carry out his program of regulatory relief, on February 17th, President Reagan signed Executive Order 12291, "Federal Regulation." That Order accomplishes three major tasks. First, it establishes the pre-eminence of the Task Force in matters involving regulatory relief.

Second, it sets forth the President's regulatory principles. These are:

- Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
- Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;
- Regulatory objectives shall be chosen to maximize the net benefits to society;
- Among alternative approaches to any given regulatory objective, the alternative involving the least cost to society shall be chosen; and
- Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

According to the terms of the Executive Order, agencies are expected to adhere to these principles to the extent permitted by law.

Third, the Order establishes a review mechanism for assuring that agency actions comport with the President's regulatory principles. This review process is carried out under the overall direction of the Presidential Task Force on Regulatory Relief, with major responsibility for implementation residing with the Director of OMB.

Under the terms of the Executive Order, executive-branch agencies must submit all proposed and final regulations pursuant to informal rulemakings to OMB prior to publication in the Federal Register. (Although independent regulatory agencies are not formally covered by the Executive Order, on March 25, the Vice President requested them to comply voluntarily with certain of its basic components.) OMB then reviews these rules and reports to the agencies whether they comport with the President's regulatory principles. To aid in the review and consultation process, and to assure that agencies have a proper factual basis on which to make their most important regulatory decisions, agencies are required to prepare Regulatory Impact Analyses (RIA's) for each rule that the agency or OMB has determined to be "major" according to criteria established in the Order. Any disagreement with OMB's views about the conformance of a proposed or final rule with the President's regulatory principles, will be

taken up by the Task Force, or, if necessary, the President. The agencies, however, retain authority over the final decision, pursuant to their governing statutes.

The benefit-cost test this E.O. requires has several noteworthy features, which direct agencies to:

-- stress comparisons among alternative remedies;

-- make explicit all important assumptions, and explore how sensitive the analytical results are to changes in assumptions;

-- quantify effects if possible, and clearly identify qualitatively those effects that cannot be quantified;

-- present "best" estimates, not "conservative" estimates, to the public as well as to the decision-makers so that in essence science and policy remain distinct;

-- facilitate early consultation, prior to publication, to lessen delays and to ward off premature endorsement of any particular position or alternative.

Obtaining adequate information before permitting a regulation to be adopted may result in some delay, and any resulting underregulation can be costly to society. But overly stringent, poorly thought through regulation also is costly.

How have we been faring? Briefly put, the average size of the Federal Register has been reduced by one-third and the number of proposed rules cut in half. To date some 900 regulations have been received by us at OMB for review. About 10 percent of the

rules we reviewed at OMB were found to be inconsistent with the President's regulatory principles; in these cases OMB so advised the submitting agencies. The average review has been completed by OMB in eight calendar days. Only a small handful of major regulations have even been submitted. Thus clearly regulatory agencies themselves have, under their new leadership, started demonstrating considerable restraint in coming forward with major new regulations.

The Task Force also is spearheading thorough overhaul of antiquated, unduly burdensome, existing regulation, with the lead on individual problems being taken by the new heads of the rule-making agencies themselves. Some 180 specific regulatory relief actions have been initiated thus far this year that could save American consumers and businesses as much as $6 billion annually without jeopardizing important social objectives. One example of these relief actions is the appliance efficiency standard regulation that was proposed last summer. Any energy savings that might have been achieved by this Department of Energy (DOE) rule would have come at an enormous cost. The standards would have required the complete redesign of virtually every appliance model by 1986. Appliance purchase prices would have increased by $500 million a year, and this added expense would probably be only partly offset by lower lifetime energy costs. DOE estimated that many of the smaller manufacturers would not have the financial resources to make such rapid model changes, so that the

rule would have eliminated perhaps the most competitive and innovative segment of the industry. Clearly there are more cost-effective ways to save energy.

In June, The White House released materials providing greater detail on the regulatory relief we have accomplished to date, and I am happy to make these materials available for your record. Much progress has been made already, but of course we've really just begun. In this respect we have been delighted with the hundreds of constructive submissions received from the public in response to the Vice President's March request for ideas on where regulatory change is most needed. Our plan is to use these submissions in helping agencies select the next round of relief candidates, beyond those already underway. How well ultimately we will fare is of course debatable -- but we are acutely aware that performance, not rhetoric, is what counts.

Senator PERCY. Dr. Hopkins, why don't you just take a place right in the center of the table, and we'll now call panel No. 6: Mr. Joseph Sugarman, Mr. Edward Gross, Mr. James Roodhouse, and Mr. R. A. Ligon, and Ms. Janet Leeson.

First I'd like to comment to Mr. Sugarman my staff has shown me a copy of your entertaining and informative handbook, "The Monster that Eats Business." I think your booklet is must reading for anyone who opposes regulatory reform. I do not know enough about the facts of your case—although we have heard a good deal about it—to know whether you're right or wrong. I've read some of the ads, but I can say that no Government agency should treat the well-intentioned businessmen the way that the FTC has apparently treated you.

Mr. David Metzger, a small businessman for the U.S. Small Business Administration, has told my staff that you make a very strong case for yourself. We look very much forward indeed to your statement. And, here, for anyone who would be interested is a copy of "The Monster that Eats Business" which has been well publicized. Mr. Sugarman, welcome.

TESTIMONY OF JOSEPH SUGARMAN, PRESIDENT, J. S. & A. GROUP, INC., NORTHBROOK, ILL.; EDWARD GROSS, PRESIDENT, GALESBURG SANITARY DISTRICT, GALESBURG, ILL.; JAMES W. ROODHOUSE, ADMINISTRATOR, INSTITUTE OF PHYSICAL MEDICINE AND REHABILITATION, PEORIA, ILL.; R. A. LIGON, ADMINISTRATOR, JACKSON COUNTY NURSING HOME, MURPHYSBORO, ILL.; AND JANET C. LEESON, PRESIDENT, LEESON'S PARTY CAKES, INC., TINLEY PARK, ILL.

Mr. SUGARMAN. Well, thank you, Senator.

Senator PERCY. And could we, because we are running quite late, have as concise summaries as possible. The full text of your statement will go in the record.

Mr. SUGARMAN. Yes, sir. I will kind of cut mine in half, but I figure there is part of it that I would like to read from the statement that I have. My case concerns a battle I'm having with the FTC—a battle unique in that I have made public many of the absurd actions of the FTC with the hopes of exposing them and consequently preventing what happened to me from happening to others.

From this battle I have learned how regulatory agencies can impose their force, power and resources to force a businessman into submission while indirectly robbing the consumer through the Agency's costly and inflationary actions.

I will just briefly describe my case and explain how it got started. In January 1979, the Chicago area was hit with three consecutive blizzards which all but paralyzed the city and during that period our computer broke down taking with it about 3,000 customer orders that we were unable to retrieve. Our people barely made it to work, and we had great difficulty getting repair people to fix our computer. But we eventually did ship out all orders although we may have shipped our orders a little bit more than 30 days that are allowed by the FTC's mail order rule. Now their rule gives you—tells you that you must ship your products within 30 days, or if you cannot ship

them, you must notify your customers of the reason for that delay, and of course we couldn t notify our customers because our computer was broke down, but after we got it fixed, we did.

About 2 months after our problem an FTC investigator stopped by our company, not because of our computer failure and not because the FTC had received any complaints about our company and not because anything that our company had done in the past had created any sort of consumer problems, but simply because of one line of type that was missing from our catalog. The line that should have been in the catalog should have stated "Copies of warranties available upon request."

The warranty availability disclosure statement was a new law passed by the FTC and they wanted to check our compliance.

The investigator who stopped by J.S. & A had checked the FTC files prior to going to our company and found a few complaints that he brought with him. Now remember however, as the investigator later publicly stated, it wasn't those few complaints nor anything else that J.S. & A. had done that prompted an investigation but simply one single line that was missing from the J.S. & A. catalog, and incidentally from practically every other consumer catalog, as the FTC rule was still new and few companies were aware of it. And as the investigator later stated, "I didn't know J.S. & A. from a hole in the ground."

Senator Percy, the scenario that followed shows very vividly how the FTC or any regulatory agency indeed has the power to enforce its arbitrary will at the expense of productive and honest American small businessmen and women.

When the FTC investigator arrived, he asked us for various documents—all of which we were happy to supply. In the process of being cooperative our staff told the investigator about our computer, and snowstorm problems, and the late shipments that resulted.

Two weeks later—now listen to this. This may sound incredible, but this is actually what happened; 2 weeks later we were called by the FTC and advised that they were going to recommend a $100,000 penalty against our company for shipping late. If we didn't cooperate we were threatened with their power to levy a heavier penalty, they indicated a penalty as high as $20 million was within their authority, and, by the way, we have all this on tape. We tape recorded some of these meetings. And that they would subpena all our records and surely find something.

To me, it was blackmail. Either face the negative publicity of paying $100,000 penalty or the negative publicity and enormous court costs of a legal battle in court.

I chose neither. I decided to attack the FTC through my own national advertising and publicity campaign to expose the inequities of the regulatory system and its abuse.

The FTC since then, has conducted an outright vendetta against me and my company, first recommending a $275,000 penalty, then backing down to $75,000 after the House and Senate started to weigh the possibility of conducting oversight hearings. More recently, they denied me the opportunity to defend myself before the Commissioners and have turned my case over to the Justice Department. I have spent over $250,000 to defend myself in this battle and my business volume has dropped from $12 million to a little more than $1 million this year.

As far as we are aware of, the charges now center on our compliance with them mail-order ruled during a 2½-year period prior to the start of the investigation. After the FTC realized that the snowstorm period might look like a silly thing to base their attack on, they subpenaed all of our records and concentrated on our compliance with the technical provisions of the mail-order rule. The basic 30-day mail-order rule sounds good. It is certainly a good standard from which to operate. But in reality, the technical provisions—those are the ones that are more technical in nature and don't cover the period of time for delivery—are almost impossible to enforce on the real frauds that cause the majority of the complaints and nothing more than a legal entrapment for those legitimate companies that try their best to comply.

The rule is filled with confusing verbiage containing compulsory options often confusing to the consumer. The rule is out of touch with an understanding of good business practices and, Senator Percy, often out of date with the realities of the new technology being used in the direct marketing industry.

For example, the following are two passages written by two mail-order people from letters sent to Vice President Bush in response to the FTC's action against my case describing the problems they had in interpreting the mail-order rule, and by the way those letters were prompted by that booklet that you have there.

This is from a company in California. It's a quote from his letter:

> One of the serious problems I had was trying to insure I did not violate any FTC rules regarding direct mail. I not only read the FTC rules thoroughly, but also called and spoke with four different FTC officials about the specific questions I had regarding the delayed delivery rules. The FTC regulation is almost impossible to understand the way it is written. The FTC officials I spoke to each had a different interpretation. Finally, I gave up and decided to devise a system that if it did violate any interpretations of the rules, I had followed the rules more than was necessary and in good faith.

And then from a company in Connecticut. This is a quote. He said:

> Our corporate counsel examined the relevant FTC regulations and gave me her interpretation. To be certain, I asked for a second opinion from independent counsel, and received a different interpretation. My own interpretation, not as a lawyer but as a marketing specialist, differed from both. Finally, we crossed our fingers and did what we thought best for our customers, even though it varied from two of the interpretations we had of the FTC rule.

And, as further proof, after our company had its problems, it was pointed out that we did not have the correct wording in our delay notice. We drafted a new delay notice which was then checked against the FTC rule by two of our FTC attorneys. The new delay notice was then presented to the FTC investigator who read it and verbally stated: "Looks OK to me," taking it with him. The FTC charged 2 years later that this same delay notice approved by the FTC used the wrong wording and was a violation of the rule.

This meant that every delay notice we sent out during this second 2-year period was a violation and subject to a $10,000 fine or, in short, they had the power to charge us with a multimillion-dollar penalty—all because of some incomprehensible rules that the mail-order industry does not understand, let alone the FTC.

I'm going to conclude and say that our company has worked its heart out to provide the finest customer service, the most innovative

products, and the most helpful and accurate advertising. I refused to let the FTC smear that reputation.

Senator Percy, I have elected to fight my case on behalf of all businessmen and women with the hopes that my challenge to the FTC, will set a precedent for others to follow and will eventually lead to more reasonable regulatory scheme.

I further believe that the mail-order industry does not actually need Federal regulations at all but rather guideines created by the industry's association. What is needed is education. Education for the consumers on how to avoid the ripoffs and frauds who, incidentally, are never really affected by the FTC's mail-order rule. Thank you.

Senator PERCY. Thank you, Mr. Sugarman, for a very dramatic story.

Mr. Gross, as president of the Galesburg Sanitary District, you, like many cities and towns across the Nation, are being forced to build very costly advanced wastewater treatment facilities without any real guarantee that water quality will be improved enough to justify the expense. One of the tremendous projects that we have is the Deep Tunnel in Chicago. It's out of the ordinary for a Senator from a State to fight against a Federal works project, when $12.8 billion is going into the State of Illinois. The cost is unbelievable. But it's a wasted project in my judgment and it ought to be stopped as quickly as we can stop it. I'm fighting it. I couldn't get the president of the sanitary district to come up to testify because they are for it. They want to go ahead.

Cook County loves work projects like that. At $12.8 billion, that's the largest in the history of the world. But it just won't accomplish what it's designed to do. It's not a cost-effective expenditure. According to a GAO report, the Comptroller General's report, we would have to double the proposed funding for the construction grants program to $5 billion per year to complete this project. Now, I can't imagine our going ahead with it. It's not going ahead as long as I have anything to say about it, and I think I'll have plenty to say about this particular project.

So we would be interested in hearing your testimony today because I think that if Chicago does it and sets the pattern for it, then there is something like 600 other cities that want to follow suit, and build deep tunnels. The cost to do that was estimated at about three-quarters of a trillion dollars.

Mr. GROSS. By that standard ours was a quite small project, however, it does involve some $40 million. We feel it's not needed. We don't want the public works project. The $40 million of the taxpayers money can better be spent elsewhere. We have a statement to make today that is really not a summary. Perhaps we could call it a position paper of the Galesburg Sanitary District, and we have submitted to your staff other papers, and we have many reports: Scientific reports, documents, transcripts of other public hearings that we'd be very happy to provide for your information. Because we feel that we have a very, very sound case, and there is absolutely no justification for this project. I will simply read our position.

Our taxpayers, as well as all taxpayers, need relief from Federal and State regulations.

Compliance with these Federal and State water pollution regulations has been important to the Galesburg Sanitary District since its formation in 1924. This became more difficult with the passage of the Illinois Environmental Protection Act in 1970 and the amendments to the Federal Clean Water Act in 1972. Prior to that, in the late sixties the trustees and residents of the district proved their commitment to a healthy environment through construction of additional sewage treatment facilities and separation of 90 percent of the combined sewer system. That construction project costing $7.5 million required that the district be bonded to its maximum allowable limit. That work completed barely 10 years ago was done because of an obvious and a proven need to eliminate water pollution due to inadequate sewage treatment and combined sewer overflows. Meeting today's State and Federal regulations would cost the taxpayers of the district and Nation many millions of dollars. Recent studies by experts in the field show little if any benefit would result from this huge expenditure. As the need is not present, we need regulatory relief at the Federal and State levels.

The situation that exists today with the Galesburg Sanitary District facing a $40 million expenditure to meet blanket standards set by the Illinois Pollution Control Board and approved by the USEPA is certainly different than it was years ago. The operating costs of the proposed advanced waste treatment plant would be three times our present costs. The district is being forced to eliminate overflows from combined sewers even though they are presently 90 percent separated. In addition advanced waste treatment is being required in order to meet strict effluent and water quality standards for suspended solids, biochemical oxygen demand, and ammonia nitrogen. The district was encouraged in 1979 when our project was reviewed by headquarters of USEPA as an advanced secondary treatment project. The district supported this review and continues to support review of advanced treatment projects on a case-by-case basis.

Portions of the advanced treatment plant were declared unjustified by the USEPA and only after a lawsuit filed by the State of Illinois against the USEPA, which was settled out of court, was full Federal funding restored to the Galesburg project. We were obviously disappointed with this outcome, as we believe and still do believe, that this $40 million expenditure would result in no measurable benefit to the stream. Further, we believe that the project was only approved due to the lawsuit and not to any proven need other than meeting the regulation. Subsequently, in August 1980, prior to being offered a construction grant by the USEPA, the Galesburg Sanitary District filed a petition for a site-specific rule change with the Illinois Pollution Control Board. The logic behind filing for the rule change was based on our general knowledge of the stream and its uses.

Cedar Creek is essentially a dry ditch until it receives the effluent from the treatment plant, and it also serves as a conduit for the conveyance of storm water during rain events. The only use being made of the stream is as a source of water for cattle. No complaints have been received from residents or downstream neighbors concerning the creek. It does not serve as a public water supply, has no recreational uses, nor potential for recreation. Biological and water chemistry studies per-

formed on Cedar Creek in the past several months conclude that there would be no change in the existing conditions even if the proposed advanced treatment plant was built and produced the specified quality of effluent. Actually the present plant effluent frequently complies with the advanced treatment standards. The studies justify a review of advanced treatment projects on a site-specific basis. The studies also determine that the designated use of fishing and swimming are not attainable through point source control and in this case where public health is not involved, the use designation should be revised to a more practical classification.

The combined sewer overflow study in our district shows that the impact of the combined sewer overflows on the stream is insignificant. This indicates the impact of C.S.O.'s should be determined on a case-by-case basis and balanced against the costs. A study to determine the impact of C.S.O.'s in our neighboring community of Peoria would also seem to be justified.

In summary, the recent experience of the district shows that regulatory relief is needed in three areas. One, advanced waste treatment projects should be reviewed on a case-by-case basis. Two, the impact of combined sewer overflows should be studied in each case and corrective action taken only after a cost-benefit determination has been made. Three, where designated stream uses are not attainable the use classification should be revised to the actual use.

We appreciate this opportunity to present our position.

Senator PERCY. Thank you very much, Mr. Gross.

Mr. Roodhouse, the effects of Government regulations on public and private efforts to care for the sick, the handicapped, and the aged is a matter of concern. Administrators of major health care facilities are important public servants, and it saddens all of us to hear that you had problems with Government regulations. You are taking time, however, away from patient care today in order to give us the benefit of your experience. Will you proceed and summarize your comments.

Mr. ROODHOUSE. Thank you, Senator. Our Institute of Physical Medicine and Rehabilitation is a private not-for-profit institute that provides rehabilitation services to people of all ages. The services we provide to some of our patients are paid for through the medicare and medicaid programs, and the Federal and State regulations for these programs are numerous and very complex. The cost to comply with these regulations considerably increases the costs of services provided to patients.

In appreciation of the time limitations of this hearing, I'll limit my testimony to a case example of what, in my opinion, exemplifies over-regulation and results in a waste of tax dollars. This is a regulation of the Department of Health and Human Services. At the end of each fiscal year our city retains an independent certified public accounting firm which conducts a complete audit of operations. At the conclusion of the audit, the audit firm prepares a cost statement for both the medicare and medicaid programs. The medicaid cost statement for the Illinois Department of Public Aid is submitted to Blue Cross, which is the contracted auditor for the State of Illinois medicaid reports. A desk audit of the submitted cost statement is made by Blue Cross. Later, usually within a few months, Blue Cross auditors come to our institute and complete a field audit of the financial operations for the fiscal

year. The result of this field audit is submitted to the director of health finance of the Illinois Department of Public Health for his review and approval. After this process adjustments are made, if necessary. And after agreement the audit is final and considered closed. All of the above is to meet Federal and State requirements and we have no particular disagreement with that particular process.

Three years after the above process had been completed for fiscal year 1977 and 1978 we received notice from the Illinois Department of Public Aid that they were going to come to our institute and do yet another integrity audit of that year's operations. I am not aware of the exact Federal regulation except that the chief of the Bureau of Program Integrity of the Illinois Department of Public Aid stated in his letter of notification that the audit is required by Federal law. The Department of Public Aid sent two auditors to our institute for 4 days to complete this audit.

Because the audit was 3 years after the fact, all of the records for that year were in storage and had to be retrieved, requiring considerable man-hours, not to mention the extensive hours required by our accounting personnel while the audit was being conducted.

From what I could determine this hopefully final audit by the Department of Public Aid personnel was an audit of the auditors. It seems ridiculous to me that another audit of our independent accounting firm, the State of Illinois audit firm, and the department of health finance has to be done. In my opinion, this is a waste of taxpayer's money and certainly a contributing factor to the unnecessary increases of medical care costs by excessive regulations.

Mr. Chairman, time does not permit, but I could give many, many other examples of how unneeded, and in my opinion, often unfair regulations contribute to the high cost of medical care, and I thank you for the opportunity to express my opinions.

Senator PERCY. Thank you very much, Mr. Roodhouse.

Finally Ms. Leeson, of Partycakes in Tinley Park, Ill. In my judgment you're the very kind of entrepreneur that we need more of in the country. If small business like yours doesn't thrive, we're not going to have the dynamic growth or American enterprise that President Reagan envisions in his economic recovery program. I understand you've had some experience with the Small Business Administration and the CETA job training program. If you could summarize your comments, please.

Ms. LEESON. Yes; that is correct. I really speak for the small, small businesses. All of these people that are testifying here today are much larger than I am. But I do speak for many, many of my fellow business people in my area who are really suffering terribly in this economy and don't have any type of backing or big money behind them to keep them going along enough to maybe survive through it. But my problem, as I see it, is I obtained an SBA loan when I first opened my business in 1976, and I think I've become an expert on SBA and small, small business loans.

First of all, the SBA likes to give out $2 million loans instead of maybe $20,000 or $40,000, and so the small, small business pretty much is turned down left and right. You have to really fight for it, and you really have to go all the way to the top. I've even resorted to contacting the President's office in some of the dealings I've had with SBA since I obtained my loan. But, as I see it, the SBA boggles us down with

regulations we can't live with. If you are lucky enough to be a recipient of their loan, it takes about 6 to 8 months to get one and millions of reams of paperwork, but if you hang in there, you may get it.

If turned down you can ask for rehearings and reconsiderations until they just get tired of you going after it, and they will eventually, maybe, give you what you're looking for. But once they give you the money, it is again different than what is advertised. Their brochures say that the maximum that can be charged is 6 or 7 percent interest like in 1976 or in 1975–76 when I was obtaining my loan You have two types of loans. You have a 90-percent guaranteed loan through the SBA and a commercial bank, or you get a direct loan from SBA. Not too many are given the pleasure of having a direct loan.

Now, at the time when I obtained my loan, the highest rate of interest in a commercial bank was 8½ percent. My 90-percent guaranteed loan was set at 10¾ percent and that was 90-percent guaranteed. At the time I obtained my loan, it was stated in the brochures and by the officers that give you advice when you're obtaining your loan, that part of your loan is for buildings, equipment, and tangible items, that you have up to 20 years to repay a loan on that—10 to 20 years max. Just a cash flow money or working capital money, has to be paid back within 7 years. Well, what actually happens is they take the whole loan and call it a working capital loan. Now, by SBA mandates, and SBA brochures it says if you have a working capital loan, you can spend the money as you see fit. You don't have to account for working capital. You just make that capital work. But what happens in fact is that even though they call it a working capital loan, they lock you into spending that money exactly the way you projected it. And the portion that they allow for working capital is too small. They will not allow you to add into your projection required series of deposits to cover your State tax, estimated State sales tax, the deposit you have to pay for Commonwealth Edison and various utility companies, the various fees that are required in the Federal and State levels and so on in order to open their business. By the time a small business person opens their doors for business, their working capital does not exist.

And, in my case, for instance, we gave a projection for a delivery van and a commercial mixer. Now, when we got our money, we were not allowed to get our van or mixer on payments and keep our loan money working for us longer, nor were we allowed to go to really look around and see if we could get a pretty good deal in some secondhand equipment. You are not allowed to borrow or buy on time without the SBA's permission, which takes weeks to acquire. So by the time you get the doors open, you have spent the money completely without being able to make it work the best way. Also they will only give you half of what you really need. You ask for $80,000, they'll advise you to ask for $40,000, and then a year or so down the road they will give you the rest, which is not true, and it just causes a disaster.

Now, I understand from all the publications and newspapers that very few SBA loans are paid back and that they have a difficult time in collecting it. Well, I say the reason is because they put these people in default immediately, and they hamstring them so badly that there is no way that these people can begin paying back the note, and they spend the rest of their time working on deferments, and then they're being studied, by various government agencies and then have task

forces working on them, they get people in to check and see whether you're running the thing right, and then their judgment is that your ideas are good and you're running your company right. the only thing you lack is working capital and they suggest that maybe they should give you the rest of the money you originally asked for. This doesn't happen. And this goes on and on.

I have been fighting with SBA since day 1. My contention, and I propose, that the regulation should be adjusted in such a way that when they're giving a small, small business person such as myself and my contemporaries a loan to start a business that's in the range of $20,000 to $80,000, let those people work that money the way they see fit, and let them work with that money the way they can. I'm sure these people, when they start out in business, aren't out to cheat the Government. There isn't a small business person out there that doesn't work their buns off for the country and is not interested in not paying back the Government, and I propose that they should eliminate some of these regulations so that these people can make the money work.

Also, I feel that the Small Business Administration should consider the small, smalls as a separate segment because 250 employees and $2 million on up to $250 million income or $2 million on up income is not what small, small people are talking about. A $120,000 to $200,000 is a lot of income for most of the small, small people, and yet 87 percent of the moneys that come into this country comes from that sector. And when we were in Governor Thompson's legislative group down in Springfield in November, I think everyone there as far as the government is concerned was a little bit shocked at how much money us little, little people do provide in the economy. I'm not saying that we don't need all other large companies such as the brickmakers and so on because they do a lot for our country, but us little, little people we're out there, too, and we're working hard, and we're not being taken care of, and we're not being taken seriously. We smalls do need the SBA—it just must be accessible to us.

As far as the CETA program is concerned——

Senator PERCY. I'm going to have to ask you to bring your remarks to a conclusion if you can.

Ms. LEESON. OK. The CETA program is a disaster in itself. So I'll leave it at that because I have it already in my notes here anyway, but the CETA program is totally useless. As far as the private sector is concerned, it should be totally abolished permanently. I appreciate the time you have let me have here to testify to this, and I hope some changes can be made. Thank you, Senator Percy.

Senator PERCY. Thank you very much indeed, Ms. Leeson. We appreciate that you think you're a small business person. You should have heard the plight of a business company president yesterday. It turns out he is president of the bus company. They have one bus. He is the driver, the ticket taker, the automobile repairman, and the form filler-outer, and all he wanted to do is take a charter group of football students from a school in town and drive them to a football game. He found that he didn't have permission to do that. He didn't get an answer for a couple of months, I guess, and found that he couldn't get permission to do it even on a charter. They had to bring a Springfield bus company up, drive 100 miles empty, deliver them 20-some

miles away, and then drive back 100 miles empty because of Federal regulations involving chartering services.

When you sit and listen to things like that, it just drives you right up the wall to think we're that inefficient and that ineffective and that we're going to try to regulate business and control the life of a one-man operation like that.

I'd like to put one question to everyone on the panel.

In Quincy yesterday, and again in Mr. Sugarman's statements today, we have heard complaints about Federal inspectors. We have to take into account that Federal inspectors and other Federal officials that have to enforce Government regulations are not the people that write the regulations. They've got the job of enforcing them and carrying them out. But there is no reason that they should not be well-trained. They should be knowledgeable, and they ought to be courteous. There is no reason for discourtesy, there is no reason for no training, and for lack of knowledge about what they're going in to check. Could you comment on what your experience has been? We'll start with you, Mr. Gross, with respect to Federal inspectors and people who are carrying out Federal regulations that you've come in contact with.

Mr. GROSS. Speaking for the sanitary districts we would actually not come in contact basically with Federal people, but on the State level we seem to get along quite well with the people and find them reasonable to work with. We just simply don't agree with them.

Senator PERCY. Mr. Roodhouse.

Mr. ROODHOUSE. It's been my experience that I find that many of the people that come and do the actual field work sometimes are not knowledgeable. I have some real questions and the things that bothers me about this many times is that the people have the attitude of investigative. Even when they're doing an audit, they come in and act like you're done something wrong, and "I'm going to get you" type of attitude, and I think that's very unfair and very wrong.

Senator PERCY. Mr. Sugarman.

Mr. SUGARMAN. Senator Percy, I found that one of the problems is that businesmen have no rights and the criminals seems to have all the rights. And I've been told many times that if I pulled a gun and killed the investigator that first walked into my office, I'd be free today because I would have rights. But the problem is they go in with a tremendous amount of authority. They don't have to tell you your legal rights, as in our case, plus, what I would consider atrocities against the Constitution. I think the problem is that the regulatory agencies should follow a more consistent pattern with the rights expressed in our Constitution and give businessmen at least some rights that criminals have.

Senator PERCY. Thank you very much. Ms. Leeson.

Ms. LEESON. Well, my comment that I would like to make in that end is that the SBA people have always been very polite and very sympathetic, but almost from the start they'll tell you that you haven't got a snowball's chance and whatever. But I think the biggest problem I've had in government watchdogging is the CETA program. Just hiring one clerk through the CETA program, they dropped in any time, and they expect you to be there training that person 8 hours a day, and when you're the president of a little corporation and have to do everything,

you're not always going to be there, and they drop in unexpectedly, and, of course, if you're not there training them very minute, they feel that you're not doing the job correctly, and you get quite a bit of the static from them plus reams and reams and reams of paperwork.

And 2 years after I got myself out of the program, they were still auditing and sending me papers asking me to fill out these forms to certify that I got x amount of dollars or didn't get x amount of dollars. Plus, again, the trainee that you take on has all kinds of rights like they can slough off, but it takes you 6 weeks to get rid of them. You have to give them a salary while they're being arbitrated to fire them, and so they can either destroy your little company while you're trying to get rid of them if you keep them on or else you have the extra burden of money to pay out that you didn't have in the first place, and that's the big problem with CETA regulations.

Senator PERCY. Thank you very much. I want to thank this panel very kindly for your thoughtful and thought-provoking testimony.

[The prepared statements of Mr. Sugarman, with additional remarks and attachment; Mr. Roodhouse, with attachment; and Ms. Leeson follow:]

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JS&A®

STATEMENT OF
JOSEPH SUGARMAN
BEFORE THE SENATE SUBCOMMITTEE
HEARINGS IN PEORIA, ILLINOIS ON THE
EFFECTS OF FEDERAL REGULATION ON
THE ILLINOIS ECONOMY

With respect to your inquiry of the rules and regulations which impose an unnecessary burden on business by a regulatory agency, I would like to comment on the FTC, its mail order rule and the regulatory process in general.

Senator Percy, you know of my case, we've talked about it on the phone and your staff has followed it. My case concerns a battle I'm having with the FTC--a battle unique in that I have made public many of the absurd actions of the FTC with the hopes of exposing them and consequently preventing what happened to me from happening to others.

From this battle I have learned how regulatory agencies can impose their force, power and resources to force a businessman into submission while indirectly robbing the consumer through the agency's costly and inflationary actions.

I will briefly describe and review my case, the mail order rule absurdities and the painful lessons I have learned, finally suggesting changes in the mail order rule itself.

In January of 1979, the Chicago area was hit with three consecutive blizzards which all but paralyzed the city. During that very period our computer broke down taking with it 3,000 customer orders we were unable to retrieve. Our people barely made it to work, and we had great difficulty getting repair people to fix our computer. But we eventually did ship out all orders although we may have shipped our orders more than 30-days after we received them.

The FTC has a rule that states that you must ship your check customers' orders within 30 days or send them a letter explaining the delay and giving them the option to cancel. If you do not hear from your customers, you must automatically refund their money within 60 days. We have no quarrel with the 30/60 day rule as we always promptly notified our customers of a back order situation whether they paid by check or used their credit cards. Our problem was that we couldn't advise our customers because of our computer failure.

About two months later an FTC investigator stopped by JS&A not because of our computer failure, not because the FTC had received any complaints about JS&A and not because anything that JS&A had done in the past had created any sort of consumer problems, but simply because of one line of type that was missing from our catalog. The line that should have been in the catalog should have stated "Copies of warranties available upon request."

The warranty availability disclosure statement was a new law passed by the FTC and they wanted to check our compliance.

The investigator who stopped by JS&A had checked the FTC files prior to going to JS&A and found a few complaints that he brought with him. Remember, however, as the investigator later publicly stated, it wasn't those few complaints nor anything else that JS&A had done that prompted an investigation but simply one single line that was missing from the JS&A catalog and incidentally from practically every other consumer catalog, as the FTC rule was still new and few companies were aware of it. As the investigator later stated, "I didn't know JS&A from a hole in the ground."

Senator Percy, the scenario that followed shows very vividly how the FTC or any regulatory agency indeed has the power to enforce its arbitrary will at the expense of productive and honest American small businessmen and women.

When the FTC investigator arrived, he asked us for various documents--all of which we were happy to supply. In the process of being cooperative our staff told the investigator about our computer and snowstorm problems and the late shipments that resulted.

Two weeks later we were called by the FTC and advised that they were going to recommend a $100,000 penalty against our company for shipping late. If we didn't cooperate we were threatened with their power to levy a heavier penalty (they indicated a penalty as high as $20 million was within their authority) and that they would subpoena all our records and surely find something.

To me it was blackmail. Either face the negative publicity of paying a $100,000 penalty or the negative publicity and enormous court costs of a legal battle in court.

I choose neither. I decided to attack the FTC through my own national advertising and publicity campaign to expose the inequities of the regulatory system and its abuses.

The FTC since then has conducted an outright vendetta against me, first recommending a $275,000 penalty, then backing down to $75,000 after the House and Senate started to weigh the possibility of conducting oversight hearings. More recently, they denied me the opportunity to defend myself before the Commissioners and have turned my case over to the Justice Department. I have spent over $250,000 to defend myself in this battle and my business volume has dropped from 12 million to a little more than one million this year.

As far as we are aware of, the charges now center on our compliance with the mail order rule during a 2½ year period prior to the start of the investigation. After the FTC realized that the snowstorm period might look like a silly thing to base their attack, they subpoenaed

all our records and concentrated on our compliance with the technical provisions of the mail order rule. The basic 30/60 day mail order rule sounds good. It is certainly a good standard from which to operate. But in reality, the technical provisions are almost impossible to enforce on the real frauds that cause the majority of the complaints and nothing more than a legal entrapment for those legitimate companies that try their best to comply.

The rule is filled with confusing verbiage containing compulsory options often confusing to the consumer. The rule is out of touch with an understanding of good business practice and often out of date with the realities of the new technology being used in the direct marketing industry.

For example, the following are two passages written by two mail order people from letters sent to Vice President Bush in response to the FTC's action against my case describing the problems they had in interpreting the mail order rules:

From a company in California

> "One of the serious problems I had was trying to insure I did not violate any FTC rules regarding direct mail. I not only read the FTC rules thoroughly, but also called and spoke with 4 different FTC officials about the specific questions I had regarding the delayed delivery rules. The FTC regulation is almost impossible to understand the way it is written. The FTC officials I spoke to each had a different interpretation. Finally, I gave up and decided to devise a system that if it did violate any "interpretations" of the rules, I had followed the rules more than was necessary and in good faith."

From a company in Connecticut

> "Our corporate counsel examined the relevant FTC regulations and gave me her interpretation. To be certain, I asked for a second opinion from independent counsel--and received a different interpretation. My own interpretation, not as a lawyer but as a marketing specialist--differed from both. Finally we crossed our fingers and did what we thought best for our customers, even though it varied from two of the interpretations we had of the FTC rule."

As further proof, after JS&A had its problems and it was pointed out that we did not have the correct wording in our delay notices, we drafted a new delay notice which was then checked against the FTC rule by two of our attorneys who specialize in FTC matters. The new delay notice was then presented to the FTC investigator who read it and verbally stated, "Looks O.K. to me," taking it with him. Two years later, the FTC charged that this same delay notice used the wrong wording and was a violation of the rule.

This meant that each delay notice we sent out during this second two year period was a violation and subject to a $10,000 fine or in short, they had the power to charge us with a multi million dollar penalty--all because of some incomprehensible rules that the mail order industry does not understand, let alone the FTC itself.

Let me point out some other provisions of the rule that don't make sense:

1) The Rule covers only check orders unless a mail order company charges your credit card. Then the 30/60 day rule applies. We therefore interpreted the rule's meaning as "making use of the consumer's money" for the start of the 30/60 day rule, and never deposited checks for a back ordered product. We also never charged a credit card account until we were able to ship. Otherwise the rule made no sense to us. We were wrong. The date you receive the check is the date the 30/60 day rule begins. You can however ship a credit card order six months later and not be in violation of the rule. This provision of the rule does not make sense and actually encourages companies to deposit checks even though product is not in stock.

2) You must send out delay notices to consumers within 30 days after receipt of a check order giving your customer the option to cancel. If you do not hear from your customer with a positive response

to hold their order, you must automatically refund their money. This rule, although well intentioned also does not cover credit card customers who are not obligated at all to be notified and who represent 80% of our business and the majority of orders from other companies.

3) The rule insists that you include a postage paid business reply envelope with each mailing so your customer can respond free of charge. When the rule was promulgated, toll-free credit card ordering was in its infancy. Today it makes more sense to include a toll-free number as a means to cancel an order than a business reply envelope. In addition to the added expense and waste of envelopes and postage, it takes much longer for the consumer to respond through the mails. It takes time for the consumer to mail the letter, time for the post office department to transport it and time for the local post office to charge a business reply account--all before it is finally delivered. Often the customer has already been shipped his product causing additional inconvenience to both the consumer and the mail order company. A toll-free number eliminates the problems cited above and is an efficient and free cancellation device.

4) The rule makes no differentiation between legitimate companies who are indeed following the spirit of the rule and those who are either frauds or who purposely try to deceive the public. In short, intent is totally absent from the rule.

5) No provision in the rule allows for acts of God or mitigating circumstances totally beyond the control of the business person.

6) And finally the FTC has the power to recommend a $10,000 penalty for each and every violation of the mail order rule. If you ship ten customers late, they have the authority to recommend a $100,000 penalty.

There are other inequities, inconsistencies and absurdities with the rule but the above are some of the highlights. In addition to the rule, a businessman is treated with less rights in defending himself in a regulatory action than a common criminal. A common criminal has rights, Mr. Percy, a businessman has very few.

And then there is the power of the regulatory agency if you decide to fight them. They have an almost unchecked subpoena power, a staff of lawyers looking to keep busy and the full resources of the US Government. The small businessperson doesn't have a chance.

I have written a series of suggested changes in the Mail Order Rule which have been published in a recent issue of Direct Marketing Magazine. And I have personally offered my services free of charge to the FTC to correct the present confusing FTC rule.

I have recommended that rules be designed to treat both credit card and check customers equally, that both credit card and check customers be sent delay notices and that the 30/60 day rule apply to those companies that charge a customers account or deposit their checks--or "make use of the customer's money."

I have also recommended the strong consideration of mitigating circumstances in a new rule and a rule that by itself would reflect the intent of a company to comply with the rule. I submit these recommendations for new rules as an exhibit to this statement.

My rules would not only provide better service to the consumer but would save legitimate mail order companies money which savings could be passed on to its customers in lower prices and better service.

JS&A has worked its heart out to provide the finest customer service, the most innovative products and the most helpful and accurate advertising. I refused to let the FTC smear that reputation.

Mr. Percy, I have elected to fight my case on behalf of all businessmen and women with the hopes that my challenge to the FTC will set a precedent for others to follow and will eventually lead to more reasonable regulations.

I further believe that the mail order industry does not need federal regulations at all but rather guide lines created by the industry's association. What is needed is education. Education for the consumers on how to avoid the rip-offs and frauds who incidentally are never really affected by the FTC's Mail Order Rule in the first place.

MY RECOMMENDATIONS FOR REVISIONS OF THE MAIL ORDER RULE

By Joseph Sugarman

The FTC mail order rules are a farce. Albert Kramer, head of the FTC's Bureau of Consumer Protection admitted to me that the rules have ambiguities, are not clear and definitely do not protect the credit card purchaser.

Even worse, the penalties are excessive, undefined and the FTC is totally ineffective against the frauds and mail order rip-off artists that plague our industry.

Kramer also confessed to me that the agency was not able to go after the frauds. Later Michael Pertschuk's assistant, James Sneed, confirmed to a government attorney representing me that Kramer was indeed correct. The FTC is not equipped to go after the real frauds. This responsibility according to the FTC belongs to the Justice Department. Yet consumers firmly believe it is the FTC that is protecting them against fraudulent companies.

In short, the FTC can only go after the legitimate companies thus leaving the rip-off artists alone. And this is exactly what's happening. Mail order complaints are growing at an alarming rate. The FTC is using this fact to justify its rules which are totally useless against the source of probably 90% of those complaints.

It would certainly be justified if we eliminated all the M.O. rules on that basis alone but unfortunately it would also be unrealistic. What is needed is to first expose the FTC for its unfair anti-legitimate business position and then move in directions that indeed protect consumers.

In the interim I recommend the adoption of rules that will replace the present rules with ones that not only protect all consumers but the honest businessman from the FTC harassment as well.

DELAY NOTICES

There is one area of the rule that also needs to be changed. The rule states that you must be able to prove that you sent out a delay notice or you are presumed guilty if you cannot. It's the typical guilty unless proven innocent approach used by the regulatory agencies.

If the agencies do not have this concession, they of course would never be able to prove or disprove that delay notices did go out and it would make the rule almost impossible to enforce. I also think it is ludicrous. For example, a disreputable company can prove through logs, records, and computer printouts that it sent out delay notices when in actuality they may have just created the records and mailed out advertisements. In short, the rule is unenforcible against fraudulent companies and therefore the rule cannot be considered fair nor is it effective.

You can't depend on the word of a customer either. Some customers to whom we have sent two delay notices forget they receive them a few days later. By the time the FTC steps in, customers could not be counted on to remember anything.

For the above reasons I think this part of the rule should be abolished. A law forcing only legitimate companies to follow a procedure is both unfair and a disgrace to our legal process.

Let us assume that we have no choice and that we must live with rules. I would therefore propose the following changes.

MY PROPOSED CHANGES

My proposed changes in the mail order rule are as follows:

1. Mail order companies may elect not to deposit checks thereby not requiring the mail order company to automatically refund a consumer's money in 60 days. The company must, however, notify the customer every 30 days after depositing the check offering the customer the option to cancel, and explaining the reason for the delay.

2. If the company does deposit the check either upon receipt or holds it for a period of time before depositing it, the automatic 60 day refund period will start from the day the check is first deposited.

3. Credit card customers must be notified of a delay within 30 days after receipt of an order and every 30 days thereafter unless the account is charged and then the same rules as check orders apply.

4. Actions by the FTC for any violations of the rule must be based on consumer complaints and not from the subpoenaing of records of that company. If the complaints do not indicate rule violations, then the case must be dropped. If they do indicate violations, the following applies:

   A. Any mitigating circumstances such as computer failures, acts of God and employee error should be considered as circumstances that would not permit action by the FTC.

   B. The first actual offense should be considered a warning without any action taken by the FTC.

   C. The second offense should require the FTC to request a cease and desist order with no penalty.

   D. The third offense should require a penalty of no more than $10,000 per month during which time the violation occurred.

   E. If consumers lost money as a result of the actions of the M.O. company, then that company should be forced to

repay that money back to the consumer.

REASONS FOR CHANGES

To understand why the changes I recommend make sense, I have divided them into two basic areas: The back order situation and the penalty for violating a mail order rule. These are the areas that did not make sense under the FTC rules and needed revisions.

As I have pointed out in my case, credit card customers are not protected under the current rule and they are also discriminated against because M.O. companies in order to comply with the rule, will ship to check customers first. My rule lets companies treat both credit card and check customers equally as long as the company does not deposit the check or charge a credit card account.

I have always felt that any responsible company should keep its customers informed during a back order situation regardless of what method they use to buy a product. I also feel that the previous rule encouraged companies to quickly deposit checks and created unnecessary expense in trying to implement automatic refund programs that weren't necessary. In addition, it encouraged companies to give priority to check customers by shipping them first to avoid violating the rule and thus discriminated against the credit card customer.

My plan treats all consumers equally, does not encourage using other people's monies during a back order situation and still provides all the safeguards that the other rule provided.

The manner I have recommended for the handling of violations also makes sense. Since the FTC has admitted that they are unable to go after the real fraudulent companies and since the only companies really affected by the rule are legitimate, tax paying companies that are trying to serve the consumer, the penalties should reflect this fact.

By accepting mitigating circumstances as an acceptable reason for a rule violation, the FTC is only being fair. In my particular case, the FTC would not have attacked me as they did if this rule were in place.

By only basing an FTC investigation on consumer complaints which in turn are rule violations, you have a true test of whether or not any harm is being done to the consumer. If nobody complains about a delay it is highly unlikely that the delay has inconvenienced anyone. If people do complain and indeed there is a violation then there is indeed a reason for the FTC to investigate. In my case, none of the complaints they had were rule violations.

The three step program I outlined for violators also makes sense. The first offense might have been an honest mistake. Having the FTC point out that mistake to a legitimate business should be enough to

straighten out that company. Everybody should be entitled to a mistake if they are a responsible company (and remember the FTC can only go after responsible companies).

The second violation really tells the FTC that the company made another mistake and that some formal action should be taken against them. Again, because the offender might not have purposely tried to violate any rules, the penalty should be merely a stronger warning or, as I have recommended, a cease and desist order.

If a third violation occurs, the FTC should be able to fine that company $10,000 per month assuming no consumer was hurt (which, remember, the FTC is powerless to help). This says that if the company was warned twice and then continued to violate the rule, it should be penalized each month the rule was indeed violated.

These recommendations are not designed to protect the consumer from fraud because the FTC can't do that anyway. All they are designed to do is to give moral guidelines to legitimate businesses and remove the unfair and harassment tactics present in the current FTC rule and in their enforcement practices.

If I had a choice, there would be no rules. Legitimate companies would follow good consumer practices anyway. The rip-off artists cannot be stopped by the FTC so they wouldn't be a factor. The only group left would be the marginal companies that won't be in business long

anyway because all businesses require repeat customers and the marginal companies soon end up out of business.

THE IDEAL RULE

The ideal rule would increase the productivity of all mail order companies and give consumers the clout to really go after the rip-off artists.

I would leave the sending of delay notices strictly up to the individual discretion of the mail order company. If the company decided not to send out notices, it is under no law or obligation to do so.

But if any consumer has not received their purchase within 30 days, or a notice from that mail order company giving him the option to cancel, then that consumer has strong rights that could lead to a rule violation agains the M.O. company. Here's how it would work.

The consumer would write the mail order company with a registered letter asking for either his money back or the product. This letter must be sent after 30 days of placing the order.

The mail order company is then obligated to answer the consumer within 20 days with either the product, or a refund. If the customer requested a refund in his letter, he would receive one within ten days of receipt of his letter. The rule would apply to check orders and would automatically cancel credit card orders.

If the M.O. company does not respond within 20 days, the consumer can forward his complaint to the FTC with documentation and expect the FTC to act upon that request within two weeks. The same penalties would apply to these rules as the previous rules I recommend.

There are several advantages to this sytem.

First, it would eliminate the costly procedures of automatic refunds, double mailings and letters crossing in the mails that are the case today. This compulsory activity costs M.O. companies not only the price of postage and printing but clerical time as well. And these costs are eventually passed on to consumers in higher prices.

The consumer would have greater authority. If he were upset with the M.O. company, he would have the right to initiate positive action against that company and be sure that the FTC would take the necessary steps to make sure there was rule compliance.

The rule would be effective against all M.O. companies--both the frauds and the legitimate concerns and treat them equally under the rule. Many of the big fraudulent bankruptcy situations could have been avoided had the FTC acted fast enough. Under this rule, there is an obligation by the FTC to act promptly and thus this prompt action could avoid serious damage to consumers.

There would be no requirement to keep expensive logs. The FTC rule which presumes guilt unless you can prove you sent out a notice would be eliminated. This provision is constitutionally unfair in that it presumes guilt unless you can prove inocence.

The rule would work for legitimate M.O. companies because those companies would send out delay notices offering refunds and explanations anyway. That would result in less irate customers and the customers would be free to choose the way they want their order handled.

The frauds would get tripped up by the procedure. If they used a policy of only responding to those customers who complained, there would be sufficient volume of complaint letters at the FTC to alert them that something was wrong. If they blatently violated the rule or advertised with no merchandise to ship, and violated the rule, it would take only 50 days before t he FTC could start violation proceedings.

In JS&A's case, an unusual circumstance that was beyond our control may have caused a few complaints which we could have easily handled. In the case of Kaleidoscope, J. C. Whitney, and other bankruptcies, the volume of complaints would have been a solid warning sign.

Consumers could be educated on the new rules from the funds collected from those companies who have discredited our industry. Therefore, the more fraudulent activity, the more funds that would be available to inform the public.

This plan services consumers and also serves business instead of harassing them. It holds down expenses, provides greater efficiency and thus greater productivity. It avoids attacking good companies who may slip once and who basically serve the consumers well and it keeps the federal government out of our businesses and back into the job of protecting consumers from the really fraudulent companies. It is this rule that makes the most sense.

There is something rotten with the FTC. My experience has taught me that we need to seriously revamp the agency. But rather th an fight for no rules, I am taking a compromise approach to at least correct the present ambiguities and fit the rules to the companies that must follow them--the law abiding legitimate companies that try and serve the consumer.

I urge everyone in the direct marketing industry to support me in these proposals. If we all band together and push for the changes I've recommended, then the FTC must seriously consider them. If they don't, I urge everyone to join in a battle that our industry can win. I suggest we take the FTC to court to enforce our position.

The freedom to conduct one's business in an honest and responsible way is being attacked by self-serving, publicity-seeking bureaucrats. We've got to show these parasites that we can fight back or they'll continue to infringe on our freedom.

I urge you to express yourself and comment on my suggestions so we can adopt industry-wide rules that indeed make much more sense than what the FTC has currently promulgated.

Issue Two
May 1, 1981

BOOKLET RESPONSE

The response to our booklet "The Monster That Eats Business" is just starting to pour in. Here are some comments:

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To Vice President Bush from a North Carolina businessman:

"One of the major promises made by President Reagan's administration that is of great interest to all small businessmen is a reduction in the regulations imposed by the federal bureaucracy on business. This is of great concern to all small businessmen throughout the country. My own experience leads me to believe that the administration and possibly many of the legisiators are simply unaware of what happens when the bureaucracy moves to enforce some of these regulations. I cannot believe that it is your intent or the intent of Congress to have some of the situations arise that now seem to be happening every day."

- -

To Vice President Bush from an Oklahoma City businessman:

"I have just finished reading a booklet published by Joseph Sugarman and the JS&A Group, Inc. The FTC is fining that company for improper conduct. If even half of the facts in the story are true, and I believe they are, this is a sickening example of bureaucratic power run rampant.

"I am a customer of JS&A and can attest this is one of the finest mail order companies I have ever dealt with.

"I have helped elect men like yourself, to in part, control these problems. Please help."

- -

From a citizen to Mr. Bush:

"Is there absolutely no way to stop the runaway action of a vindicative government agency: the FTC versus JS&A? I have been reading about this fiasco for a number of years, and it seems to grow worse and worse and all at the expense of consumers and taxpayers.

"The seemingly exorbitant fines being suggested by the FTC in this matter over the self-interpreted wording of rules and regulations (not laws) by the FTC sound more like some Russian plot rather than an American agency designed to assist and help the citizen.

"Surely our Congressmen have heard the will of the people in the last election and will act now to curb overregulation and insensitive bureaucrats."

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- -

From a citizen in Portland, Oregon to John Dingell:

"The FTC case against JS&A INC. (Joseph Sugarman) is a classic example of unbridled abuse of power. It is necessary and realistic for your House Subcommittee on Oversight and investigations to investigate the conduct of the FTC in this case.

"I have been a mail order customer of JS&A for six years and while I have marveled by their innovation, I am even more marveled by the execution of their order filling. There is no finer mail order company in the United States."

- -

And finally from another citizen in Greensboro, N. C. to Congressman Dingell:

"It would appear from what I have read that the circumstances surrounding this pending litigation should come under the scrutiny of your committee so that future cases of a similar nature could be handled without the resulting consequences to the taxpayer and business concerned. It would also appear that the FTC is quite unwilling to listen to reason or admit that an error in judgement may have been made; that perhaps restitution should be made by the FTC. Not only was there possible intimidation of the company and attempts to solicit complaints from consumer organizations by the FTC, but also a wanton failure to review with an open mind the size and nature of the problem - all this coupled with inappropriate press releases by the agency through sources other than normal -- such as release by a congressman.

"Activity by JS&A tends to support them as a good corporate citizen - standing up for its rights against seemingly unsurmountable bureaucracy and willing to lay all their cards on the table. Perhaps this would be the proper time to determine how many other small businesses have been subject to similar injustices by an agency whose task it is to protect the consumer while not infringing on the rights of companies to conduct their affairs in a prudent and proper framework which benefits both business and consumer alike."

- -

Keep in mind that this is just the initial response to our mailing. As your letters express your outrage, hopefully Congress or the Vice President will respond and bring my case to its logical conclusion.

I am also getting examples of other FTC abuses and am prepared to present these to Congress as well. If you haven't written to V. P. Bush or Congressman John Dingell, please do. The expressions of its citizens are the most powerful force this country has. You can make a difference.

I will keep you closely informed on the battle and thanks again for your support.

EDITORIAL

March 26, 1981

JOE SUGARMAN IS CERTAIN to be in the news during April 1981. His battle with the Federal Trade Commission has taken a new turn for the worse and the well known mail order entrepreneur is coming out swinging again. (See page 50) The FTC is scheduled to soon announce that they want $275,000 in fines, not the original $100,000.

Joe and I sat in his room at the Century Plaza earlier this month after the curtain had been rung down on DMMA's 16th Annual Spring Conference in Los Angeles. Joe brought *this* reporter up-to-date on his problems with the FTC. Showed me the letter he will be mailing to the media and previous supporters in April. He showed me a cartoon booklet done unsolicited by a cartoonist who had followed this bizarre FTC case. Joe explained his plans to challenge a bureaucracy which has gone bananas over a situation not worthy of the time and expenditure of taxpayer dollars. His plan is on page 52.

Though late in our schedule, I called New York and asked our people to make room in this April issue to print his letter and several pages from the cartoon booklet which will see considerable distribution during April. I was told some things that we should not print, which will be revealed as the battle is waged. It should not give you much comfort to know about some of the inner workings of this agency, the arrogancy. It is apparent that the JS&A case has come to push and shove, a nightmare of technicalities of little substance. You should know about it.

The fact that FTC is disavowing as legal a 30-day notice written by JS&A lawyers and approved by FTC people two years ago is infuriating. This notice is the basis, according to Joe Sugarman, for charging that there were 21,000 violations found during a search of microfilm records turned over to the FTC last fall. We have not checked with the FTC concerning this issue because we did not want to inadvertently reveal the events that will unfold during April which will charge the FTC with foul play. Anyway the FTC doesn't discuss pending actions.

We are saddened by this case. The FTC is looking bad. And that's not good. Business has learned that this important agency can effect rules which allow businesses to compete without having to resort to actions which are not in the public interest. The 30-day rule is a good one in that merchants using the mail order method must all abide by the same shipping requirements. But the rule is complicated. Not really understood by those to whom it applies. It discriminates between customers who send money for a purchase and those who don't (rule doesn't apply).

The rule concerning sending the 30-day notice is unclear. We checked DMMA's 1981 FACT BOOK just published ($19.95) which outlines the rule, contains many useful questions and answers. You should check it against your procedures. The one concerning the requirement that a business reply envelope must accompany the notice is ambiguous, therefore dangerous. Joe Sugarman, in sending his 30-day notice, failed, at one time, to provide a business reply envelope, but instead provided a toll-free number for customers to call to speed the process. This was declared "no good" by the FTC, despite the fact that it provided better, easier service, cut down the incidence of cross-over mail.

FTC's response to the Sugarman case should have been an upgrading of the rule in this regard. They might well have simply warned JS&A that it was not in full compliance. After all, 75 complaints out of 800,000 orders doesn't suggest the guillotine.

The FTC needs to clean up its act, communicate better, take a paternal interest with those businesses which are obviously trying to do a good job. They should bear down on those who are not, and unfortunately there are too many. The pity of it is that the FTC does not go after the worst offenders, claiming they don't have the time. The worst offenders are allowed to go broke owing hundreds of thousands of dollars to waiting consumers. During the Christmas holidays last, we here at *Direct Marketing* were inundated with complaints from irate consumers. Took us several days to discover why *we* were getting them. Finally learned that an in-bound service bureau, through an error, was referring complaints of unshipped merchandise to us. Further investigation revealed two companies involved, one on each coast, both of whom failed to communicate and ship orders dating back to October for a knife in one case and pots and pans in another. We perhaps received no less than three dozen complaints, possibly the tip of the tip of an iceberg. Where was the FTC in these cases which mar the reputation of an exploding method of selling?

More important, should there be new mechanisms in place to help the FTC enforce the 30-day rule? The Better Business Bureaus and DMMA's invaluable Mail Order Action Line provide an opportunity to set-up a communications line to regional offices. This would provide an opportunity to mail the rules with a warning, establish a file for follow-up. But this suggestion wouldn't fly in an atmosphere of arrogance, intollerable stupidity, young lawyers with a mission to whip, coerce, and destroy.

There's much talk these days of clipping the FTC's wings. President Ronald Reagan's budget cutters seek to remove some operating funds. Businessmen seem to be cheering the cutback, clamor to defang the Bureau in certain areas. The budget cuts are a must. But so is the FTC. What's needed is a house-cleaning, streamlined internal procedures, a sense of direct marketing in handling the affairs of FTC with its constituents.

And if there's time and money left, maybe an award should be concocted for Joe Sugarman who has spent much more than the proposed fine to defend his business against arrogance and stupidity, but more important, to remind marketers that there is a Rule, that it needs to be taken seriously, that we need a change at the FTC. It was announced this week that Commissioner Robert Pitofsky has resigned effective April 30, 1981. He was rated as tough, too pro-consumer. Perhaps the president's new appointment will bring balance, a fresh approach, and above all, sensible communications with the public as well as business.

Meanwhile, let's not let Joe go down the drain without a squawk.

Cordially,

"Pete" Hoke

Henry R. "Pete" Hoke, Jr.
Publisher

The previous editorial was run in the Direct Marketing Magazine which is the trade publication of the mail order industry.

We are getting support from all over the country, but as of yet no response from Congress. To date, even the FTC has not responded. To our knowledge they haven't even officially made the recommendation yet to the commission despite their threats to us that they would. Our contention that they were using the $275,000 as a club to force me to settle for less might be true.

As these developments take place, we will keep you informed.

From Calvin Coolidge's address at the 150th anniversary of the adoption of the Declaration of Independence (1926):

"No method or procedure has ever been devised by which liberty could be divorced from local self-government. No plan of centralization has ever been adopted which did not result in bureaucracy, tyranny, inflexibility, reaction and decline.

"Of all forms of government, those administered by bureaucrats are about the least satisfactory to an enlightened and progressive people. Unless bureaucracy is constantly resisted it breaks down representative government and overwhelms democracy. It is the one element in our institutions that sets up the pretense of having authority over everybody and being responsible to nobody."

"Let us have faith that right makes might, and in that faith let us to the end dare to do our duty as we understand it."

Abraham Lincoln

JS&A/FTC Battle Report

One JS&A Plaza, Northbrook, Illinois 60062

Bulk Rate
US Postage
PAID
JS&A Group, Inc

PREPARED STATEMENT OF JAMES W. ROODHOUSE

Our Institute provides rehabilitation services to Illinois residents receiving assistance from the Illinois Department of Public Aid. At the end of each fiscal year our Institute retains an independent audit firm which conducts an intensive audit of operations and prepares a cost statement. This audited cost statement for the Department of Public Aid is submitted to Blue Cross which is the contracted intermediary for the State of Illinois. A desk audit of the cost statement is made by Blue Cross. Later, usually within a few months, Blue Cross comes to our facility and completes a field audit of the operations for the fiscal year. The result of this field audit is submitted to the Director of Health Finance, Illinois Department of Public Health for his review and approval. All of the above is to meet federal and state requirements and regulations, and we have no particular problem or disagreement with this process.

Three years after the above process had been completed for Fiscal Year 1977-1978, we received notification from the Illinois Department of Public Aid that they were going to come to our facility and do another audit of that year's operations. As you can see by copy of the attached letter, it was indicated the additional audit "is required by federal law". The Department of Public Aid sent two auditors to our Institute for four days to complete this audit. Because the audit was three years after the fact, all of our records for that year were in storage and had to be retrieved which required considerable man hours, not to mention the extensive hours required by our accounting department personnel while the audit was being conducted.

From what I could determine, this final audit by the Department of Public Aid personnel was "an audit of the auditors". It seems ridiculous to me that an audit of the findings of our independent audit firm, the State of Illinois' audit firm and the Department of Health Finance has to be done. In my opinion, this is a waste of taxpayers money and certainly a contributing factor to unnecessary increases in medical care costs by excessive regulation.

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC AID

JEFFREY C. MILLER
DIRECTOR

April 2, 1981

624 SOUTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60605

Mr. James W. Roodhouse
Institute of Physical Medicine
and Rehabilitation
619 North East Glen Oak Avenue
Peoria, Illinois 61603

Dear Mr. Roodhouse:

The Illinois Department of Public Aid, as part of its responsibilities in the Medicaid Program, conducts routine audits of medical service providers throughout the state.

You have been selected for audit under this program. The purpose of the audit is to determine your compliance with Department policies and to determine whether the cost report submitted to the Office of Health finance is in accordance with the rules and regulations under the "Providers Reimbursement Manual."

The Department of Public Aid is required by federal law to conduct random audits. I wish to remind you that one of your responsibilities as a provider of medical services is to maintain records of services provided and furnish any medical or financial information required by this agency.

The auditors delivering this letter are authorized to examine the financial as well as non-financial records of your clinic. Your cooperation in this audit is greatly appreciated.

Sincerely,

Michael L. Berger, Chief
Bureau of Program Integrity
Medical Assistance Program

MLB:ejr
Attachment

- RECORD REQUEST LIST -

Institute of Physical Medicine & Rehabilitation

1. Records identifying the physicians who have received salaries from IPMR for fiscal year 1978.

2. Records identifying the amount of salaries made to physicians listed in item 1 for fiscal year 1978.

3. Outpatient Medicaid Log book for fiscal year 1978.

4. Ledger accounts for fiscal year 1978.

   a) Administrative & General
   b) Employees Welfare
   c) Insurance

5. Cash Disbursements Journal for fiscal year 1978.

6. Payroll Journals for fiscal year 1978.

7. Contractual agreements with St. Francis Hospital & Methodist Hospital.

PREPARED STATEMENT OF JANET C. LEESON

Subject: S.B.A. Loans for small, small businesses and C.E.T.A. program, for the private sector.

S B.A. is a needed agency for the small, small business. However, the regulations governing this agency make them almost totally ineffective in their function to help small business.

First of all, their brochures and verbal advice do not always reflect fact. Example: S.C.O.R.E., and loan counselor advice. If you need an $80,000 loan to get a business started, it will be turned down. Only ask for $45,000, then a year or so down the road you will be able to get more. Results: Disaster.

Brochures: Loans (at the time ours was applied for), were not to have an interest of over 6-7%. Current rates at commercial banks were 8½%. Fact: Guaranteed loan (90%) was set at 10¾% interest.

Brochure: Loan amounts for equipment, building, etc., have up to ten years repay and working capital up to seven years to repay. Working capital can be spent as business sees fit and need not be accounted for on an itemized basis.

Fact: Although total loan is set up as "working capital" with a repay of five years maximum, the bulk of the money must be spent exactly as projection states. For instance, in our case, we needed a delivery van and a commercial mixer. For our projection we submitted the costs of new items. To stretch our funds, if we could have purchased good used ones or bought new ones on payments, it would have kept our loan money working for us longer. Regulations do not allow this. Also, not allowed or considered are the necessary "deposits" of money for State and utilities, and other "fees," when the original loan is applied for. As a result, the amount designated as "working capital" is practically nonexistent by the time a business is opened. Within a few short months a company is in "default."

From that point on, it's practically a full time job dealing with the S.B.A. for deferments. Documents must be provided, studies made, meetings attended, and more. You have not time to tend to the growth and survival of a business; which, under the present regulations, are doomed from the start. Under capitalization, and all the time spent gathering documents and data; it keeps you from "minding the store."

I propose: Trust the business person to know how to best invest his loan and put less "strings" on how the funds are spent. Give the business person more freedom to buy on "time" without S.B.A.'s permission. You will find more of your loans will be paid off, and not defaulted.

Under capitalizing and advice of such is suicide. Yet, that advice is always given by Government.

S.B.A. is there to provide loans and aid to the "small" business. Fact: S.B.A.'s interpretation of small is for the majority of business, very large. When you have a study showing that 87% of all Government moneys comes from businesses that employ less than twenty people, and 76% is from ten or less employees. You have to wonder why S.B.A. is set up to help "small" businesses of 251 employees and 2½ million a year income. Commercial banks are more than happy to help businesses in this category. It's up "small's" of the 0 to 20 employees, or less, that find commercial funding impossible—yet, we are the backbone of America. We need S.B.A.!

S.B.A. disaster loans: catch-22. In order to be eligible for disaster loans, a business (or person) must produce a "loss." When a loan is approved, only a small fraction of what was "lost" is awarded. Result, "paperwork" and time costs more than funds received. The regulations governing disaster loans are a disaster in themselves.

Women in business "special loan up to $20,000." Brochures state loan will be considered without regard to "any other loan" that is already in existence or applied for. Results: Turn down because of existing loans or "other loans" in process of being applied for. Again, catch-20.

C.E.T.A. program: A program geared to provide government agencies with a way to hire and create more salaries, PLUS, income for government. For the Private Sector it is a total failure. Example: When the private sector applies for a C.E.T.A. employee, we are required to fill out forms listing what training is required and how long that training program is needed for, also, how much we feel you can pay in wages.

C.E.T.A. evaluates this and chops the training time in half. Then requires you to increase the salary after "their" projected training to much more than the average pay is for that category. Result: You either pay off the worker as soon

as the "training time" is over, or are paying inflation wages for an under trained employee. If the employee proves to be bad for business, such as: impossible to train, treats customers badly, or is insubordinate—if you let that person go it takes six weeks to accomplish a "hearing." In the meantime you have to pay that person their wages. If you keep the person working while you arbitrate to fire them within the six weeks, that person could effectively destroy your business. Another bad regulation in the C.E.T.A. program is the different set of requirements in different counties. This making it impossible to work with when your business is in a fringe area.

Example: I wanted to hire someone who lived in Will County, that showed a training potential. She well qualified as an unmarried mother of two small children, but because my business was in Cook County, she could not be hired under C.E.T.A. regulations. In Cook County the employee had to be from Cook County, and could work in any County. In Will County, the BUSINESS HAD TO BE in Will County, and the employee from any county. A catch-22 that never was resolved. Standardize your regulations so ALL counties can be effective. Interesting note—I went to a C.E.T.A. meeting of about 2,000 participants. Two were from the private sector. Another gentleman and myself. Regulations make it impossible for business to effectively get aid from Government Agencies as they now stand.

I might add an objection to the requirements of your hearing. The amount of "copies" I was required to provide for this hearing are excessive and very costly for a small business person such as myself. Surely the Government could have taken my "one Copy" and provide the extra necessary copies for this hearing. Why should this cost fall on us just because we are willing to help Government and Small Business work more effectively together. There are many more regulations on the State and Federal levels dealing with Workman's Compensation and Unemployment Insurance that I could testify about but I felt that other businesses and groups are heavily involved in these areas! Not too many can, from personal experience, effectively testify on S.B.A. and C.E.T.A. regulations. I've been there—still am involved with S.B.A. and would be grateful if constructive changes could be made so we could bring stability to our economy. Also, work more effectively together.

Senator PERCY. We're accumulating a number of problems, Dr. Hopkins, that we know that you intend to do something about. We'll incorporate them in the report to the Vice President.

Our next panel this morning: Mr. Donald Johnson, Ms. Mary Harkrader, and Ms. Jane Johnson. We're pleased to have this final panel. I do want to commend you for your courage in speaking out in favor of Government regulation. It's not a popular cause these days. And I want to assure you that I by no means support the willy-nilly abandonment of all regulations. As I said at the outset of these hearings, there are certain regulations that we need to strengthen and improve and concentrate, but the case is simply that it's just like going into safe working habits and standards. I see no sense in the Government continuing to enforce with an even hand regulations in an industry that through the years has proven itself safe, on companies that have had outstanding safety records. We ought to concentrate our attention on those that are flagrant abusers of safety standards, that have atrocious regulations or policies.

Along with two Republican Presidents and a great many of my Republican colleagues in the Congress, we've worked hard to enact much of the environmental and safety legislation of the past 15 years. We're proud of what we accomplished. But in the process of building this body of regulation and law we have done some things—and some things were done before my time in the Senate—that today are not really cost-effective whatsoever. It's time we look at new and fresh ways of what we're doing. The Congress is not going to allow all of the good that has come out of this body of law and regulation to be

stripped away. What we need to establish is a fair balance in the regulatory area, consistent with our No. 1 priority of getting the Nation's economy back to good health.

If there are ways we can achieve our environmental and safety goals that will cost less money or impose less paperwork, we should make those changes.

I hope your testimony will address itself to those points.

First let's have Ms. Harkrader, who will represent the Sierra Club. I am sure there are a great many people in the Peoria community who are concerned about environmental issues. We have received a tremendous amount of mail from citizens throughout Illinois who are concerned about the environmental policies of the Reagan administration. And I'm certain that you can give articulate voice to the concerns of many of these people.

TESTIMONY OF MARY HARKRADER, GROUP CHAIR, HEART OF ILLINOIS SIERRA CLUB, PEORIA, ILL.; DONALD A. JOHNSON, EXECUTIVE SECRETARY, WEST CENTRAL ILLINOIS BUILDING AND CONSTRUCTION TRADES COUNCIL, PEORIA, ILL.; AND JANE JOHNSON, CITIZENS FOR THE PRESERVATION OF KNOX COUNTY, ACCOMPANIED BY JAN KING

Ms. HARKRADER. Thank you for your invitation, Senator Percy, to speak here today. I think you're right. We're probably some of the very few people who are here saying that it's a good idea to have some Government regulations, and I think our concern is that having sat through all the testimony that's been given this morning it reminds you of something I read a long time ago, an old Chinese proverb that says when you try to make a law, or change a law, approach it as you would cook a fish—very gently. I think that when you talk about regulatory reform or relief, it's very easy to say that there shouldn't be regulation. But many of the environmental regulations come from the fact that in the 1970's the Government decided that people would no longer use our natural resources as dumping grounds. And I think that, as I said in my testimony that you have a copy of—and I'm not going to read it all—the United States began to require polluters to internalize the costs.

Some of what you heard here this morning was people wanting not to internalize the costs. But more than that. I think that when you approach the problem of the Deep Tunnel project, of Peoria's sewer project, the combined sewer outfall, and of Galesburg. They're very expensive, but we don't believe that they're the only way to go. The Sierra Club locally has presented another viewpoint.

Unfortunately, our city council sent that viewpoint off to the consultants who had drawn up the original expensive design, and I bet we can all guess how that came back. So I think that in Congress it's going to be extremely necessary for you and for the other people on this committee, on this subcommittee, to observe that Federal regulations don't become gutted—those that have done good in the past. You know that pollutants don't recognize State lines, because in returning a lot of power, a lot of authority, to the States, you have to remember

that their authority does stop at their own State lines, and there are pollutants that certainly cross them.

And I would close by just saying that we think improvements are needed. Certainly we have had to deal in one way or the other, whether it's in Government or private business, with regulations that seem absurd just as the people have who were here giving testimony. But we do not feel that those changes should impair the environmental goals that have been set by the Congress. Thank you.

Senator PERCY. Thank you very much, indeed.

Mr. Johnson, we're delighted to have you here today representing labor.

Mr. JOHNSON. Thank you, Senator. I will try to keep my remarks as brief as possible. Let me address the issue of Davis-Bacon, which seems that every time there is a new Congress in Washington someone brings out the knife and tries to figure out how that particular piece of legislation can be cut back significantly or repealed. That law, which is on the books now, was put there initially in 1931 by the business community, and it was put there to protect the contractors who are bidding on Federal projects. It was put there to prevent contractors from just steaming across the country with a crew of people who, because they need work, are willing to work for less than what the prevailing wage rate is in the area where they go.

I don't think any of us disagree when we say we must find ways to cut costs. We've got to find ways to improve productivity in the construction industry. However, it seems to me, and to many others, that we can eliminate costs someplace other than in the paycheck. We can eliminate cost by eliminating waste in the setting up of the program, by eliminating waste—you know, if you just say to an employer that if you eliminate the cost of wages of your employees, you're not encouraging him to be a better manager. So that's one of the issues, and we could go into this whole Davis-Bacon thing for an hour, and you don't have an hour, and I'm sure that the other people here don't either.

But we are strongly opposed to any cutback in Davis-Bacon. Davis-Bacon, as you well know, does not apply to all of the Federal moneys that go into construction currently. It hasn't for years. A good example is the Department of Agriculture. The majority of those dollars are not and have not ever been covered under Davis-Bacon. Many of the HUD dollars are not Davis-Bacon dollars. So if anyone wants to do cost analysis of Davis-Bacon verses non-Davis-Bacon, the mechanism is there to do it, it's just a matter of doing it.

I'll address the issue of OSHA briefly. The last count I have which was about 2 months ago, Illinois has 43 inspectors covering industry as well as the construction industry. In Illinois you've got roughly 200,000 employers in the State of Illinois, I don't know how many workplaces, and 43 people to inspect those workplaces. I don't think that we're being overregulated. I think we're being underfunded dramatically in the occupational health safety area, and I believe that if the right type of moneys were put in there—we would have fewer injured workers—which translates into lower workman's compensation insurance cost, and less lost time injuries, which again means less employer cost.

Some of the things that have been done recently by the new Secretary of Labor, such as taking off the books a proposal that was there to allow an employee to know what type of toxic chemicals that he was working with. That's a regulation that's been struck, and I imagine you have heard that before, Senator. Those of us in our industry and those of us that must work for a living find that rather upsetting.

Decontrolling of gas prices. I don't have to tell you what that's done. All you have to do is go to the gas pump. I have a 17-year-old son that fortunately is working in a grocery store that's organized, so he's making pretty good money. But he's having severe difficulty in getting the gasoline put in his automobile to get back and forth to work. Obviously one of the greatest cost factors as far as inflation is energy cost. I say obvious—maybe not to others, but most certainly to me. Energy enters into every realm of our life, whether it be in the work place or in the social structure of our life.

The sunset regulation: I fortunately was here this morning when the advocate of sunset for Illinois made such an elegant plea. I feel strongly that whether we have sunset legislation, or whether we don't, the mechanism is there to take any law off the books that is not doing the job that it was intended to do, that is applying too much pressure, putting any undue hardship on a large segment of our society. The only difference between doing it the way it can be done now is that it requires public debate, and doing it the way it would be done if we are doing it through sunset regulation would be that it could conceivably deny public debate by virtue of just not being debated, not being funded.

I think that any protection that, we, the citizens of this country have that is going to be taken from us, most certainly deserves the strongest type of public scrutiny and public debate.

Minimum wage: We've heard an awful lot of conversation lately about how we can improve employment among teenagers if we have something other than a $3.35 minimum wage for these people. If you'll bear with me just a moment: We've got a small fishing cabin down in Lake Carlyle in southern Illinois. One of the gentlemen that owns the major bait shop down there, a very decent guy, and I were shooting the breeze one day, we were talking about teenage unemployment. In that area there just aren't a great number of places for young people to work. He said to me if it weren't for $3.35 an hour minimum wage, I could hire some of these young people. I said, well, what are you doing now? He said I'm hiring adults because I have to pay them $3.35, but if I have to pay the adult $3.35, I'd hire the younger person for the lesser amount. What happens to the adult? There is no employment for him either in that area or he would not be working for $3.35. I'm not going to sit here and champion the cause that you can support a family on $3.35 an hour.

By the same token, it will keep you off food stamps and it will keep you out of the unemployment line. So I'd very much hate to see us reverse the figures of unemployment and have high employment in the teenage ranks and even higher adult unemployment.

Senator PERCY. Mr. Johnson, if you could wrap it up just as quickly as possible. Dr. Hopkins and I have to leave in just a couple of minutes.

Mr. JOHNSON. I will make comment on social security because, quite frankly, I'm not an expert in it, but it seems to me if we start cutting back social security guarantees that I have at age 46, and that others have at age 20, and that others have at age 65, it's going to shake dramatically the confidence that many of us have in the system of government that has told us since, what, the 1930's, that we have a contract with you, the American worker, and that contract says that we are going to guarantee you, at age whatever, these benefits and they're going to be coming your way and with that and the interest of time——

Senator PERCY. Thank you very much indeed. As executive secretary of the West Central Illinois Building and Construction Trades Council, you're well qualified to comment on these matters.

Ms. Johnson and I share in common a great desire to protect prime farmland. It's a great heritage we have in the State of Illinois, and we've got to preserve and keep it. If you could make your comments as brief as possible.

Ms. JOHNSON. Senator Percy, my statement is brief, very brief, and it is a summary. I represent the Citizens for the Preservation of Knox County, and it's a group of farmers, mothers, teachers, business people. We're concerned about these surface mining activities on prime ag land, surface mining for coal.

For today's hearing our thrust and purpose is to encourage Vice President Bush, the committee and you, Senator Percy, to keep as a model the existing regulations to Public Law 95–87, which is the Surface Mining Control Act.

OK. Because the strip mining industry did not police itself and did abuse midwestern farmland, we and others similarly alarmed had to petition our Federal Government for relief from total continued destruction of Knox and other midwestern counties' farmland.

Now, I know industry complains of regulation and to wanting a free rein but we, on the other hand, complain that scrapping or drastically modifying surface mining regs beneficial to the preservation of prime ag land in Illinois is twisting issues. We warn, in this case, that a lack of essential governmental regulation is a bad Government regulation.

We do not believe that 95–87 or any other law gives Secretary of the Interior James Watt the power to submit alternative regs to 95–87 and scrap those duly, legally approved by Secretary Andrus, pertinent to the act.

OK. If this be so, then each succeeding administration could play havoc with regulations solidly on the books. This would lead to great confusion in State programs and in coal industry operations likewise confusing us at every turn. Right now our citizens can't adequately comment on 95–87 regs because we do not know which regs Mr. Watt upholds and which is scrapped. But figuring our odds, we presume to guess that regs benefitting the prime ag land may be the next to go.

Watt's regulatory procedures in shredding Public Law 95–87 and weakening it's enforcement denotes failure of Government and no protection by Government which was the basis and purpose of Congress enacting strip mine legislation in the first place.

90-375 O - 82 - 16

Our group would like to remind Senator Percy of Representative Pat Schroeder's excellent efforts investigating reorganization of the Office of Surface Mining. I won't go into that.

Now, specifically the regulations matching section 510(d)(1) of Public Law 95–87 require that coal companies establish proof of row-crop corn and bean productivity on postmined land equal to premined yields. Now, to date and to our knowledge, we have found no documented evidence that exists proving the required productivity on a feasible scale. Now, in the spring of 1982, all prime acres potentially in the shadow of coal mining shovels must be reevaluated for new 5-year permits with the result that once over this trial, if the prime ag land regs are weakened, then it's home free for the coal companies holding these lands and any other lands that are coal company prey. Findings of the Supreme Court, in it's decision of June 12, make no allowance for variances from the prime ag land requirements.

Senator Percy, because of slipshod, ineffective enforcement by the Illinois Department of Mines and Minerals, our State's regulatory authority, in the matter of enforcing prime ag land and other important regulations, we oppose the U.S. Department of the Interior's proposed change to eliminate all comparison of a State's regs with those previously accepted by the Secretary as required by the act. This change, known as the State window provision, institutes, instead, comparisons of a State regulation with the requirements of the act rather than with the accepted regs. We believe that this change will allow Secretary Watt to approve weak programs containing huge State windows. Other proposed changes in State window provisions will tend to make hearings adjudicatory thus scaring off citizen participation. But I might say it's hard to scare off the Knox County people.

OK. I had a bit here about the Illinois Regulatory Mines and Minerals not being qualified to administer—become the regulatory authority. I won't read that, but I would sure like to have you read it. OK. I had a couple of little deals in here about Richard Harris not being qualified because it helps to promote—we think he helps to promote the development and use of coal, and that would come under the same category under mines and minerals, being the regulatory authority.

In the matter of deciding whether or not to suspend the proposed regulation to end the grandfather exemption in 1982, Secretary Watt postponed his decision on whether or not to suspend the proposed regulation until August 14. He received a lot of pressure on this rulemaking from yourself, from Secretary of the USDA, Jack Block, in response to very strong citizen opposition. Because of this delay, we fear that ultimately the regulation will be weakened or scrapped altogether. If this comes about, Mr. Watt will have lawlessly asserted his protection to industry which is contrary to the act. I would remind all parties concerned that nothing in the act tolerates grandfathering prime ag land indefinitely.

All right. Now in the matter of lands being unsuitable for strip mining of coal. Mr. Watt's latest demand of implementing a stricter regulation where citizens petition to have these lands declared unsuitable will in effect lower citizen participation and effectiveness. He plans to require a technical merit study which is akin to instituting a lawsuit. This wasn't a requirement of the act or its present regs.

The U.S. Supreme Court recently upheld the lands unsuitability category of the act as constitutional.

Senator PERCY. Jane, I wonder if it would be possible for the rest of your comments to be incorporated in the record as if given in full. We're just going to have to draw our hearing to a close now.

Ms. JOHNSON. Well, I would like to thank you for the opportunity. I had a clincher at the end. It says—but you violated my clincher. It says that we are pleased that the Senator included us in this hearing process and we are most pleased that our essential critical voices are not silenced. Thank you.

Senator PERCY. Thank you very kindly. Could I ask one question for just a one word response from labor and environmentalists. As always, a delicate balance must be developed between economic development on one side and health and safety standards and environmental considerations on the other. Are you concerned that in the Reagan administration that balance is going to be tipped too heavily in favor of economic development and that there will be a lessening of emphasis and lower priority for safety standards and for environmental standards?

Mr. JOHNSON. Keeping within your guidelines, Senator, in one word, absolutely.

Ms. JOHNSON. Definitely.

Senator PERCY. Well, I thought we ought to have on the record your concern because you are representative of the flood of comments that I have had.

The excellent testimony that we've had today in Peoria I think will be a challenge to the Congress and a challenge to the administration. The record will be kept open for 30 days. We will submit additional questions to the three of you, and we would appreciate your answering those for the record. We'll keep the record open for 30 days to accommodate your replies, and, of course, we always welcome your letters. So feel free to write me about Federal regulation.

[The prepared statement of Ms. Harkrader, letter to Senator Percy submitted by Mr. Johnson, responses of Mr. Johnson to written question submitted by Senator Percy, and the prepared statement of Ms. Johnson follow:]

PREPARED STATEMENT OF MARY HARKRADER

In the 1970s the United States entered into a long-term commitment to restore and protect the quality of the environment. The signing of the National Environmental Policy Act (January 1, 1970) signaled the start of a decade of legislative and administrative initiatives at all levels of government. On the federal level, some 20 major environmental laws were enacted during those ten years. The control of pollution and the preservation of natural resources became major items of public business.

National air and water quality standards were adopted, federal funds were invested in the construction of sewage treatment plants on a large scale, and two federal agencies, the Council on Environmental Quality and the Environmental Protection Agency were established to monitor developments and to enforce standards.

The air is cleaner; data on ambient air quality in most major metropolitan areas indicate that levels of pollution have been reduced through the enforcement of emissions standards on stationary and mobile sources. Water is purer; measurements of water quality show continuing declines in pollution levels as a result of restrictions on industrial discharges and improved treatment of municipal wastes. We have a healthier environment and a more pleasant one. Pollution has not been brought under control--environmental objectives that have been set have not been reached.

Our economy suffers from high inflation and stagnant economic conditions, and it might be expected that the public interest in environmental goals would be lessened. There is, however, no indication that support for pollution control measures has faded. Public opinion surveys consistently indicate strong backing for governmental efforts to protect the environment, even as costs of compliance have risen. The costs of controlling pollution represent government-mandated corrections to the traditional working of the market place. In the past, polluters used common resources--air, water, and land--as free receptacles for their wastes. In 1970, the United States began to require polluters to internalize the costs associated with the abuse of these resources.

The burden of proof seems to have been put on those who seek a weakening or postponement of environmental standards. Where circumstances present a clear threat to public health, the enforcement of environmental standards must come first. The safeguarding of natural resources has become a continuing responsibility of the public

and private sectors, and should not be regarded as easily expendable.

No human activity--food production, the manufacture of goods or energy, or whatever--can be sustained without water. Where there is not enough clean fresh water, there can be no factories or farms or cities. Water is one of those few basic substances that is a vital link in the fragile ecosystem upon which all life depends.

While energy shortages dominated public attention during most of the 1970s, a coming water crisis has crept up close behind. Just as the gas crunch of 1973-74 foretold a future of permanent energy shortages, the droughts of 1975-76 warned of our water problems.

Groundwater, our great water resource, cannot be thought of as separate from the network of surface rivers, lakes, and streams that have become so despoiled. The health department in Tazwell County across the Illinois River is presently looking for a new source of drinking water because it's source is polluted by farm chemicals. Groundwater differs from our surface waters in two significant respects. First, it is more vulnerable to permanent harm, it slow to return when depleted, and can take centuries to recover when polluted. Second, groundwater enjoys less legal protection than do surface streams. The most frightening stories of chemical contamination of water came from the communities located near the Love Canals and other industrial poison pits. During 1979, EPA listed 103 known hazardous waste-storage sites, and that number is probably larger now.

The chemicals being found in well supplies and nearby hazardous dumps are associated with a host of human ailments, including headaches and dizziness, brain and nervous system damage, seizures, loss of hair, paralysis, cancer, and other illnesses.

EPA is just beginning to enforce a Resource Conservation and Recovery Act to upgrade landfills. Safe Drinking Water standards were slow to be set, and enforced, although the Act was passed in the early 1970's.

What did the Clean Water Act of 1972 and the new Environmental Protection Agency achieve during the 1970s? The results are mixed. Disease causing organisms are down. The total volume of oxygen-consuming wastes being dumped into our waters held about even over most of those ten years. Eighty-five percent of the nation's industries met the Clean Water Act's 1977 deadline for the first phase of improved treatment, though only 30 percent of municipalities did.

Fishermen are catching small-mouth bass, coho salmon, and perch in the Detroit River. A number of other formerly dead streams have made comebacks, complete with fish and, in a few cases, swimming. That can't presently be said about the Illinois, but we hope it will be in the near future if nonpoint runoff can be reduced.

On the darker side, eutrophication of lakes has worsened overall, due to increased pollutions from nutrients such as phosphorus and nitrogen. We have failed in the march to meet the Clean Water Act's original goal of "fishable and swimmable" waters by mid 1983. There are some people who would designate certain rivers as lower class rivers--not deserving clean up and attention.

"Nonpoint source" polluters (agriculture, forestry, mining and real estate construction for example) are, in terms of volume of waste output, the worst polluters in the country. For example, agricultural lands contribute most of the more than four billions tons of sediment produced each year in the United States. This movement of dirt--carrying pesticides and other chemicals and turning our rivers into oxygen-less mudholes--is wasting both our waters and our best farmland topsoil. Section 208 was supposed to address these problems. The efforts, which depend entirely on state and local enforcement, have not produced much beyond much debate about voluntary or involuntary controls. Since there have been voluntary controls in place to curb soil erosion for many years, it seems an ineffective way to control the severe sedimentation problems of the Illinois River.

The national sewage-treatment effort promises to become the biggest domestic public works spending program of all time, bigger even than the interstate highway program. Up to now, much of the fast paced funding has been funneled into conventional technologies and institutional arrangements that are both economically wasteful and environmentally destructive. There are available and widely proven alternatives which are environmentally superior and usually cheaper; treatment systems that use the fertilizer value of sewage in crop irrigation, for example, and sewerless systems for the home or neighborhood that turn waste into compost. Environmental groups have campaigned to revive the alternatives to conventional sewage-treatment technologies and methods. In 1977, an amendment to the Clean Water Act was passed that meant that communities that adopted alternative sewage-treatment plans would be rewarded. That is taking a long time to percolate down to lower levels of government.

The most controversial element of the clean water laws, and the one with the greatest potential for bringing a major reshaping of environmental protections in succeeding decades, has been the "zero discharge" goal of the Clean Water Act, which proclaims an objective of ultimately eliminating all discharges of pollutants into our navigable waters. This concept was completely at odds with the conventional knowledge in pollution control, which always regarded the stream and its "assimilative capacity" as the final stage of waste treatment.

The point of the zero discharge goal is simple. It is based on an appreciation of how difficult it is to separate out, let alone even detect, an ever-changing assortment of thousands of pollutants once we allow them in our waters. Its proponents recognize that these pollutants are really resources out of place, needing to be wisely managed and not just "controlled." Throwing away the valuable nitrogen fertilizer in sewage is just as wasteful as damaging the river into which the sewage is released. The zero discharge goal makes it a national objective to find cost-effective ways to recycle and reuse our resources rather than dump them in our drinking water. Much of Peoria's drinking water comes from the Illinois River.

The Council on Environmental Quality, in its 1979 report, observed: " Acid rain is recognized as one of the two most serious global environmental problems associated with fossil fuel combustion, the other being the accumulation of carbon dioxide in the atmosphere."

Acid rain is created when oxides of sulfur and nitrogen, which are released by burning fossil fuels, stay in the atmosphere long enough to interact with water and create sulfuric and nitric acid. The sulfuric acids emanate primarily from power plants, while the nitric acids come both from power plants and autos. Sources in the United States currently emit 26 million tons of sulfur dioxide and 22 million tons of nitric oxides a year; Canada's figures are 5 million and 2 million tons, respectively.

The acids can remain in the atmosphere for as long as five to six days and can travel thousands of miles. When they are deposited on the land (usually as precipitation), they cause extreme changes in local ecology, particularly in water quality and in closed aquatic communities. Water is naturally acidic, but the accumulation of nitric and sulfuric acids in rain and snow has brought water's pH down in many areas of the continent. Rainfalls with a pH below 5 are almost

the norm, and below 4 are not uncommon. In many parts of the Northeast, the water has a pH of 4 to 4.6, 10 to 50 times higher in acid than normal.

Not all areas are equally vulnerable to the ravages of acid rain, however, as Dianne Dumanoski pointed out in her Sierra article last year. Depending on their composition, all soils have a greater or lesser ability to neutralize the acid falling with the rain. Some lakes, such as Cayuga near Cornell University, will never become acidic because they are in areas rich in limestone. The limestone amounts to a built-in anti-acid that neutralizes significant quantities of acid. Other soils have only limited amounts of limestone, which can be quickly exhausted.

The effects of acid precipitation are observed first in lakes, rivers and streams, where increasing acidity places great strains on fish and amphibians. Water with a pH of 5 to 6 inhibits reproduction functions in fish and amphibians, and a pH below 5 causes their extinction in the ecosystem. Acid rain leaches such toxic and heavy metals as aluminum, mercury, cadmium and lead from the soil. Normally, these elements are combined with particles of soil and leach out slowly. Acid rain speeds up the process. The result has been the accumulation of heavy metals in lakes and rivers; the heavy metals are taken up by microorganisms, plants and fish.

The causes of acid rain are pollutants now regulated by the Clean Air Act. Several elements of the act's program--prevention of significant deterioration, non-attainment, new-source performance standards--have reduced the increase in acid rain. Technology does exist to reduce sulfur oxide emissions from power plants, but controls on new sources are only part of the problem. The Clean Air Act does not regulate sources that existed in 1970, and they can emit seven times the sulfur permitted under the new-source performance standards. It has been estimated that in 1990, 70% of emissions from power plants will still be coming from pre-1970 sources.

As for nitrogen oxides, the technical problems in power plants are more severe. Oxides of nitrogen are formed at the high combustion temperatures that exist in the plants. Redesigning burners, modifying operations and other proposed measures all aim at reducing combustion temperature, but they would reduce generating capacity and efficience.

In autos, nitrogen oxides are being reduced by using three-way catalysts. The National Commission on Air Quality estimates current programs will result in a 73% reduction by 1987.

The Commission recommended that Congress consider requiring a significant reduction in sulfur dioxide emissions by 1990 in the eastern United States, and that an interim goal also be discussed for 1985. It also recommended strengthening sections of the Clean Air Act that require states to reduce emissions affecting other states, and suggested the need for a regional secondary-standard program and urged that, effective March 1, 1981, no state be allowed to relax sulfur dioxide limits established in state implementation plans, except under severe economic hardship.

Is there any way out? Or has Hamlet's "most excellent canopy" indeed become "a foul and pestilent congregation of vapor"?

There is a solution to the problems created jointly by carbon dioxide build-up and by acid rain, and it lies at the source of the problems--the combustion of fossil fuel. The solution, of course, is to reduce our use of fossil fuels, to turn toward increasing the efficiency of energy use, and to develop solar power and other sources of renewable energy.

The President's Commission for a National Agenda for the Eighties stated: "Our conclusions are simple, stark, and painful. There are no "magic barrels". There is no easy technical or resource fix, neither synfuels, nor new finds, nor solar energy. For the next decade we will have to make do with what we have, and our main hope is to increase energy efficiency; for that is the meaning of conservation. Conservation simply represents the cheapest, quickest, surest, and least risky way to restrain the nation's requirements for energy in general, and for imported oil in particular, in the 1980s.

If public funds are to be invested in the energy sector, they should go where they are likely to elicit the greatest and most immediate return--that is, mainly into energy conservation. They should not be disbursed to the most costly, and least promising, energy production technologies. "

George Santayana, in "Character and Opinion in the United States", says " All the declarations of independence in the world will not render anybody really independent. You may disregard your environment, you cannot escape it; and your disregard of it will bring you moral impoverishment and some day unpleasant surprises."

Scientists and government officials have for years acknowledged that the toxicity of many common air pollutants is enhanced because they take the form of particles too small to be screened out of the lung by the body's natural defense mechanisms. Existing National Air Quality Standards for total suspended particulates, sulfur oxides, and nitrogen dioxide have pressured industry to deploy air pollution control devices that curtail emissions of fine particulates and their chemical precursors to some extent. But we have no regulatory program aimed specifically at controlling fine particulates, despite scientific evidence that implicates them as particularly toxic to human beings, dangerous to the natural world, and destructive of visibility and materials.

The fine particulates contain most of the man-made carbon, lead, sulfur and nitrogen containing compounds. Naturally, the ratio of fine to coarse particulates varies widely from cities to rural areas. In general, urban areas directly affected by transportation, combustion, and industrial processes show higher ratios of fine to coarse particulates than rural areas do.

The human respiratory system is admirably equipped to filter and remove large natural dust particles, but not man-made fine particles. Particles smaller than one to two micrometers are drawn deep into the respiratory system when a substantial percentage is deposited in the lung's air sacs. There is no such thing as a " harmless" respirable particle. We need a comprehensive new program aimed at developing regulations to reduce the concentration of fine suspended particulates in our ambient air. We must make sure that EPA's program for maintaining and improving visibility focusses on the role fine particulates play in reducing visibility. We must design the stationary source performance standards so that stringent controls are exerted over the emission of fine particulates and the gases that form them. We must establish a national air quality monitoring system for fine particulates, and determine--now before our national auto fleet is converted to diesel--how much the increased use of diesel engines will add to fine particulate pollution.

Environmentalists seek responsible behavior by all people, behavior that does not degrade the environment others must share, or impoverish the future. We seek constructive growth that improves general conditions at reasonable costs. We are against the brand of progress that means that only a few gain and most lose.

Peoria-Tazewell Illinois Labor Council

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ED PHALEN
Sgt.-At-Arms

June 23, 1981

Charles H. Percy
Att: Rob Portman
101 Senate Courts
Washington, D.C. 20510

Re: Sub-Committee on Proliferation and Government Process, scheduled in Peoria, Illinois on July 2, 1981.

Dear Mr. Portman:

In response to Senator Percy's letter of June 12, 1981, and our earlier conversations, we have reduced the issues of concern to the following:

1. Davis-Bacon Act-The 96th Congress witnessed a major assult by big business and anti-labor groups to repeal or cripple the 1931 Davis-Bacon Act, which requires payment of prevailing wages to workers federally funded construction porjects. The Davis-Bacon Act helps assure stability in a notoriously unstable industry by guaranteeing adequate wage rates to allow for the recuitment, training and maintenance of a skilled construction labor force within the local area. It also serves to protect the community and its workers from fly-by-night operators seeking to win government contracts by paying low wages and bringing in outside workers.

   As stated in my letter of May 8, 1981, wage conditions throughout the land would be chaotic if the Davis-Bacon Act was abolished. The consumer or user of services of the Building Trades would be the first to suffer the loss.

2. Occupational Safety and Health Act (OSHA)-The landmark Occupational Safety and Health Act guarantees workers in the private sector the right to a safe and healthy working environment. Since its enactment in 1970, worker fatalities have decreased 10 percent and thousands of workers have been spared serious injuries. Despite

that record, Congress has consistantly failed to provide OSHA with adequate funding and seriously weakened its job safety protections.

In 1979, the AFL-CIO requested Congressional approval of an additional $44.3 million in OSHA funding to hire 1,185 OSHA inspectors, and the House Appropriations Committee refused. Since then, concerted attacks have been made in both the House and the Senate to badly undermine OSHA.

As stated in my previous letter, the effectiveness of OSHA is presently not at its best because of lack of employees to administer the law. We are concerned about its effectiveness.

3. Oil and Price Controls-The double-digit inflation of 1979 and 1980 was fueled largely by skyrocketing energy costs, compounded by a decision by the President to phase-out federal price controls on domestic oil. This highly inflationary action will result in consumers paying an additional 1.1 trillion (as reported by AFL-CIO) over the next decade in higher energy cost. For a family of four, this will mean an average fuel cost increase of nearly $20,000 over the next ten years (per AFL-CIO) and this estimate does not include higher cost due to OPEC price hikes.

   As stated in my previous letter, "Decontrol of oil and gas prices", has brought about a burden to the poor and unemployed and to bring about a loss of jobs creating an additional burden to the tax payer.

4. "Sunset" and Regulator Reform-"Sunset" legislation is nothing but an assault by big business on federal programs to subject every major labor, consumer, environmental, and most laws such as OSHA and the Wagner Act to eradication.

   The Senate version of the "Sunset", as interpreted by the AFL-CIO, would require that nearly every federal program be terminated every ten years. Any program killed by "Sunset" could not be funded unless Congress voted to authorize it. Although few federal programs were exempted, one glaring exclusion from the mandatory termination provisions was many tax loopholes and subsidies which go to big business and wealthy individuals.

   We do not need legislation that is going to harm the consumer or worker.

5. Minimum Wage and Youth Sub-Minimum-To reduce the minimum wage is just a subsidy to irresponsible employers.

6. Social Security-Social Security is a contract with the

the American Worker. Those of us in the construction industry have seen our future retirement benefits threatened by continuously raising the maximum amount that will be paid in. As our people become older, it becomes more difficult for them to do the hard physical work of the construction worker. Obviously, as they work less hours in their later working years, and pay in less, the amount they will draw is reduced. Now under the current proposal, they are being told if they retire early at (62) they will receive an additional dock in their Social Security retirement. These are benefits these workers have earned over a lifetime.

One thing that could be done to assist this fund, would be to eleminate the provision that allows the extremely high wage earner to quit paying F.I.C.A. when his earnings reach a certain level.

Thank you for giving us the opportunity to express some of our views.

Sincerely,

Michael R. Miller, President
Peoria-Tazewell Illinois Labor Council

Robert Barker, President
Teamsters Local #627

Donald A. Johnson, Executive Secretary
West Central Illinois Building and Construction
Trades Council

ADDITIONAL QUESTIONS FOR DONALD JOHNSON:

(1) Mr. Johnson, at my hearings in Quincy and Peoria, we heard a great many complaints about federal inspectors--not just with OSHA, but with a variety of government agencies. Do you think these inspectors are generally well-trained, courteous, and knowledgeable about the industries they must cover?

ANSWER: I have found the OSHA inspectors to be courteous and apparently well-trained; however, you understand, I can only speak for those in the Peoria area.

(2) I would also like to ask you about the Illinois On-Site Health and Safety Consultation Service. As you may know, this program provides free on-site consultations for businesses throughout the state and advises them about their health and safety obligations. Do you think this is an effective program? Is there any chance that this type of service could help improve government-business relations to the point where we would need less regulation?

ANSWER: I am familiar with the On-Site OSHA Construction Service. During the time I served as Director of Labor for Illinois (1975-1977), I felt as I feel today: This type of a program does not begin to go far enough in providing a safe work place for Illinois workers.

As to the effectiveness of the service--I doubt that 10% of the workers in Illinois are aware that the program exists. Senator, it is my opinion that this type of program will never replace the need for strong OSHA enforcement.

PREPARED STATEMENT OF JANE JOHNSON

My name is Jane Johnson. I live on a small farm in Knox County near Gilson, Illinois. I am here speaking to you on behalf of the Citizens for the Preservation of Knox County, a diverse not-for-profit organization of teachers, farmers, mothers, business people and county officials that has as it's common bond, it's love of the land. Our purpose is to help preserve the PRIME AGRICULTURAL FARMLAND for agricultural purposes and to educate the public as to the environmental, social and economic damage caused these lands by surface mining for coal.

For today's hearing our thrust and purpose is to encourage Vice President Bush, the Committee and you, Senator Percy, to keep as a model the existing regulations to Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, 30 USC 1201.

Because the strip mining industry did not police itself and did abuse midwestern farmland, we and others similarly alarmed had to petition our federal government for relief from total continued destruction of Knox and other midwestern counties' farmland.

Industry complains of regulation and to wanting a free rein but we, on the other hand, complain that scrapping or drastically modifying surface mining regulations beneficial to the preservation of prime ag land in Illinois...is twisting issues. We warn, in this case, that a lack of essential governmental regulation is a bad governmental regulation.

We do not believe that PL 95-87 or any other law gives Secretary of the Interior James Watt the power to submit alternative regulations to 95-87 and scrap those duly, legally approved by Secretary Andrus, pertinent to the Act.

If this be so, then each succeeding Administration could play havoc with regulations solidly "on the books." This would lead to great confusion in state programs and in coal industry operations likewise confusing citizens at every turn. Right now the Citizens for the Preservation of Knox County can't adequately comment on PL 95-87 Regs because we do not know which regs Watt upholds and which he's scrapped. Figuring our odds, tho, we presume to guess that regs benefitting the prime ag land may be the next to go.

Watt's regulatory procedures shredding PL 95-87 and weakening it's enforcement denotes failure of government and no protection by goverament which was the basis and purpose of Congress enacting strip mine legislation in the first place. By upholding Mr. Watt's maneuvers, the Republican Administration and President Reagan become party, we feel, to fraud.

The CPKC would like to remind Senator Percy of Representative Pat Schroeder's excellent efforts in investigating Secretary Watt's reorganization of the Office of Surface Mining. The results of the investigation clearly make good common sense, dollar-wise, nullifying any advantages of Sec. Watt's misguided, misjudged reorganizational plans.

Specifically the regulations matching Sec. 510 (d) (1) of PL 95-87 require that coal companies establish proof of rowcrop corn and bean productivity on post-mined land equal to pre-mined yields. To date, to our knowledge no documented evidence exists proving the required productivity on a feasible scale. In the spring of 1982, all prime acres potentially in the shadow of coal mining shovels must be re-evaluated for new five year permits with the result that once ever this trial, IF the prime ag land regs are weakened, then it's "home, free" for the coal companies holding these lands and any other lands that are coal company prey. Findings of the Supreme Court in it's decision of June 12,

1981, make no allowance for variances from the prime ag land requirements.

Senator Percy, because of slip-shod, ineffective enforcement by the Illinois Dept. of Mines and Minerals, the state's Regulatory Authority, in the matter of enforcing prime ag land and other important regulations, we oppose the US Dept. of the Interior's proposed change to eliminate all comparison of a state's regulations with those previously accepted by the Secretary as required by the Act. This change, known as the State Window Provision, institutes, instead, comparisons of a state regulation with the requirements of the Act rather than with the accepted regulations. We believe that this change will allow Sec. Watt to approve weak programs containing huge state windows. Other proposed changes in state window provisions will tend to make hearings adjudicatory thus scaring off citizen participation.

Also, expansion of state windows concerning Title II, Sec. 201, (a) PL 95-87, states in referrence to employees administering the Act,

> "..... no legal authority under authority of OSM which has as it's purpose promoting the development or use of coal or other mineral resources or regulating the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (30 USC 801) (83 Stat. 742) shall administer the provisions of PL 95-87."

Therefore, the Ill. Dept. of Mines and Minerals as Administrators of the Federal Coal Mine Health and Safety Act in Illinois, never were and are not eligible to be declared by Governor Thompson as the Regulatory Authority to oversee the provisions of the Federal Surface Mining Control and Reclamation Act in Illinois.

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By the same token, confirming Richard Harris as Director of the Office of Surface Mining overseeing reclamation and control of strip mining in the US is also a breach of PL 95-87. Harris is considered by many to be a promoter of coal mining interests. In both instances the federal government has erred. Clearly, in the case of James Watt's appointment as US Secretary of the Interior, the whole nation expects him to promote the development and use of coal in this country which clearly violates this same provision.

In the matter of deciding whether or not to suspend the proposed regulation to end the "Grandfather Exemption" in 1982, Sec. Watt postponed his decision on whether or not to suspend the proposed regulation until August 14th. Sec. Watt received a lot of pressure on this rule-making from yourself, Senator Percy, and from Secretary of the USDA, Jack Block, in response to very strong citizen opposition. Because of the delay, we fear that ultimately the regulation will be weakened or scrapped altogether. If this comes about, Mr. Watt will have lawlessly asserted his protection to industry which is contrary to the Act. I would remind all parties concerned that nothing in the Act tolerates "grandfathering" prime ag land indefinitely.

Mr. Watt's latest demand of implementing a stricter regulation where citizens petition to have certain lands declared unsuitable for strip mining for coal will in effect lower citizen participation and effectiveness. He plans to require a technical merit study which is akin to instituting a law suit. This is not a requirement of the Act or it's present regs. This requirement will chill citizen participation by making more demands upon people opposing strip mining of these special lands. The US Supreme Court recently upheld the lands unsuitability category of the Act as

constitutional but quite possibly clever minds may, through relaxation of the regs and lack of enforcement, lower that standard, too.

Mr. Watt has a right to reorganize his Department but we challenge his plan. We believe it shucks responsibilities the Office of Surface Mining must perform. We are bothered about what oversight responsibility OSM will exercise once a state receives an approved regulatory program prior to development of any reorganizational plan.

In closing, we would remind Senator Percy and his associates that environmental protection is good for business. The regs implementing the Prime Ag Land Amendment to 95-87 do have a dollar pay-back. With environmental protection, responsible companies face less citizen opposition and as a result can maintain coal production for a longer span of time. The regs to 95-87 afford equal competative pricing of the product, fair to state. Adhering to protective regs will maintain the strength of our nation by handing our wealth on to our children. We are all stewards of this life-giving food base. Our farmland is our "four aces in-the-hole" ....if we hold on to them.

For the record I submit letters written to Mr. Watt from several Senators and Sec. Block objecting, as we are, to weakening the surface mining regulations and asking for definite protection of this nation's prime farmland.

The Citizens for the Preservation of Knox County, generally speaking for others like ourselves, appreciate this opportunity to voice our distrust of Sec. Watt's tampering with the beneficial regulations of PL 95-87. We are pleased that the Senator included us in this hearing process and we are most pleased that our essential critical voices are not silenced.

Thank you.

JJ:egb

Senator PERCY. I want to thank Mayor Carver and Terry Colbus of his staff. Thanks to Phil Carlson, Mickey Hardwick, and their staff over at the Peoria Chamber of Commerce, and we greatly appreciate Congressman Bob Michel's help and that of his staff—John Schad particularly.

Once again we want to thank everyone for their participation. Dr. Hopkins, once again, we very much appreciate your coming in from Washington for this meeting. The hearing is adjourned.

[Whereupon the hearing was adjourned to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF BRUCE E. ANDERSON, REPRESENTING SENATOR CHARLES H. PERCY, GALESBURG, ILL., JUNE 9, 1981

Mr. Chairman and Members of the Board: It is an honor and a pleasure to appear before you today as a representative of Senator Percy, and to speak on his behalf in support of the Galesburg Sanitary District. The problems raised by this appeal are similar to those faced by dozens of municipalities throughout Illinois, and by literally hundreds of cities throughout the United States. Advanced treatment of municipal sewage wastes and control of combined sewer overflow have become two of the most perplexing and controversial issues in the federal water pollution control program.

The extraordinary costs and uncertain environmental benefits of these facilities have been the target of numerous federal studies, and it appears that Congress is finally prepared to make substantial changes in the laws governing water pollution control. At long last, the federal government is recognizing that good intentions have clouded good judgment, and that pouring billions of dollars into sewage treatment facilities may not necessarily mean a cleaner, healthier environment.

During his tenure in the U.S. Senate, Senator Percy has consistently supported strong legislative measures to protect the nation's environmental resources. From the beginning, Congress has recognized that protecting the environment creates obvious economic and administrative problems. No one argued that restoring a safe, healthy environment would be easy or cheap. Over the last three years, however it has become apparent federal environmental regulations have thrust enormous financial and administrative burdens on states, businesses, and municipalities, without necessarily enhancing environmental quality.

For this reason, Senator Percy strongly supports the concept of case-by-case review of all advanced treatment and combined sewer overflow control facilities to be absolutely certain that the expected environmental benefits justify the costs of constructing, maintaining, and operating the facilities. Blanket requirements for CSO control and stringent water quality standards that require advanced treatment have created an enormous drain on the federal treasury and the Illinois environmental program, but may not have contributed significantly to improving water quality.

The most notorious example of distorted priorities created by blanket CSO requirements has been the monumental Chicago Tunnel and Reservoir Plan, or TARP, which Senator Percy first began investigating in 1978. Between Fiscal Years 1972 and 1980, Illinois received a total of $1.7 billion under the federal construction grants program. Nearly two-thirds of that total—over $1.2 billion—has been spent primarily on reducing combined sewer overflow in the Chicago River and Sanitary and Ship Canal, even though the TARP facilities will have no discernible impact on public health or on the uses of the Metropolitan Chicago waterways. The Chicago Ship Canal may change from a sickly green to a noxious brown, but it will continue to be used for commercial navigation and will probably never support fish life of any kind.

As Senator Percy has said, trying to make the Chicago Ship Canal safe for fishing and swimming is like trying to make the Dan Ryan expressway in Chicago safe for bicyclists and pedestrians. The only justification for TARP is that it meets federal requirements for CSO control. It contributes nothing to the economic vitality, the public health, or the quality of life in Illinois.

A recent report by the Illinois Institute of Natural Resources estimated that meeting the current CSO requirements in Illinois outside the Metropolitan Sanitary District of Greater Chicago would cost $476 million. If we include the MSD, that figure jumps to a startling $1.7 billion. Nationwide, according to the U.S. Environmental Protection Agency, it will cost a staggering $26 billion

to meet the current requirements for CSO control, and an additional $21 billion for advanced treatment facilities. It is totally unrealistic to believe that the American taxpayers can afford this excessive regulatory burden, particularly when study after study reveals that many so-called necessary projects will not bring about significant economic, environmental, or public health benefits.

The Chicago example clearly shows how rigid, uniform standards for CSO control can undermine the entire pollution control program in Illinois. The federal General Accounting Office concluded in January this year that because of spiraling construction costs, TARP can only be completed if the Reagan Administration doubles its proposed funding for the construction grants program to $5 billion annually, which is highly unlikely given the budget-cutting fever in Washingon today.

Even then, Illinois would have to spend every cent of its federal pollution grants on TARP for nine years to complete the project. For nearly a decade, every other worthy pollution control project in Illinois would be put on hold pending completion of TARP. By setting our goals so high that they cannot possibly be achieved, we sabotage realistic efforts to pinpoint resources where they will give the maximum possible benefits.

Congress has become increasingly concerned about the high costs and elusive benefits of advanced treatment, and has ordered case-by-case reviews of the justification for certain categories of these facilities. At the same time, there has been more and more willingness to give states the responsibility for conducting advanced treatment reviews. Proposed as future legislation by the Reagan Administration and by the Senate Environment and Public Works Committee will shift greater responsibility on the states for setting treatment priorities and establishing the need for proposed facilities.

Congress now strongly favors careful review of every proposed advanced treatment facility to show that there will be significant public health or water quality improvements. Though the federal EPA estimates that there are nearly $21 billion in advanced treatment "needs" nationwide the federal General Accounting Office recently stated in a report to Congress: "Based on our discussions with Federal and State water quality officials and consultants and our review of scientific studies on water quality, we concluded that advanced waste treatment—with few exceptions—may not be justified."

The Reagan Administration, in proposing to the Senate an amendment to the federal Clean Water Act, stated, "This amendment, in keeping with intent of the reform proposal, requires that prioritization of projects is linked to those areas reporting highest treatment needs. It also requires that inclusion on the priority list is tied to a project's demonstrated ability to achieve significan water quality benefits. This will ensure that Federal funding is focused on projects which will result in the greatest amount of pollution control for the money expended." The Administration proposal is supported by the leadership of the Senate Environment Committee.

In the coming year, Congress will likely shift the burden of proof on state and federal regulatory agencies to show that every proposed treatment facility will significantly enhance public health or water uses, rather than forcing communities like Galesburg to spend tens of thousands of dollars to show why these facilities are unnecessary. It also appears that the federal Environmental Protection Agency will be much more willing to allow states greater flexibility in establishing water quality standards and setting funding priorities.

The Pollution Control Board performed admirably in 1971 and 1972 when, under severe times constraints imposed by federal law, it attempted to establish state-wide water quality standards that took into account the physical, technological, and economic barriers to achieving fishable-swimmable waters in Illinois. The Board recognized that its goals and timetables were ambitious, but given the information available at the time—and the internal pressure from the federal EPA to set rigid standards—these objectives seemed practical and realistic.

Inflation, and the administrative and technological difficulty of achieving fishable-swimmable waters, have forced us to recognize that the task is much more difficult and expensive than we ever dreamed. The Washington Post, in a five-part expose on the problems of the federal Clean Water Act, recently concluded, "What the government has learned the hard way is that the overblown goals and the generously funded solutions of the 1960's and 1970's are producing a failure in the 1980's."

At any given time, between 60 and 90 percent of the facilities built under the Act—including those facilities in Illinois—do not perform up to their design

specifications. Fully one-third of the plants built under the $25 billion federal construction grants program are in serious violation of the their discharge permits. An investigative subcommittee of the House Committee on Public Works and Transportation found that, "From the start-up of the program, States and communities have consistently urged the construction of projects considered 'ready to go' regardless of the design specifications. Rather than stepping back from a designed project, examining alternative forms of waste treatment, or dealing with institutionally difficult nonpoint pollution, the emphasis has been on spending and building."

I do not believe, and Senator Percy does not believe, that the federal environmental program has been a failure. The Illinois Environment Protection Agency, under the outstanding leadership of Mike Mauzy, has overcome most of the administrative pitfalls that have plagued other states, and on many occasions has forced the federal EPA to adopt more reasonable regulatory guidelines to improve the effectivness of all state environmental programs. Illinois has one of the most efficient and technologically sophisticated environmental programs in the United States and Illinois citizens can be proud of the progress that has been made.

It would be tragic if we were to declare the national environment clean-up a failure, to slash it from the budget, and to return to the senseless environmental degradation that preceded the environmental revolution of the 1970s. But we must recognize that our financial resources are limited, that our knowledge about the effects of pollution on aquatic life is far from complete, and that, as the Chicago case proves, we have made some regretable errors in judgment.

The government has indeed learned some hard lessons about environmental protection. From now on, we must be absolutely certain that every dime spent on pollution control facilities yields the maximum possible benefit in water quality—not in abstract terms of BOD or ammonia reduction per dollar expended, but in real, tangible improvements in water uses and public health. That approach, and that approach alone, will assure that Illinois taxpayers get the return they deserve on their environmental investments.

Neither I nor Senator Percy is prepared to judge the legal and technical arguments that have been brought before you in these hearings, and we fully trust your wisdom and judgment in this appeal. We ask only that you consider fairly whether the citizens of Galesburg will be asked to build treatment facilities that will be of real, tangible benefit to the People of Illinois, and that will contribute significantly to the future quality of life in this state, or whether the Galesburg Sanitary District will be forced to shell out $40 million or more to meet an arbitrary uniform standard that fails to change the recreational, esthetic, or agricultural uses of Cedar Fork Creek.

PREPARED STATEMENT OF JOHN BEARCE, PRESIDENT, JOHN BEARCE FORD, INC.

1. The present interest rate is the No. 1 problem of the auto dealers. High interest rates have much greater impact on automobile dealers because of high price inventory we must maintain. Example—all businesses dealing with tangible goods compared to professionals and businesses dealing in a service. High interest rates when coupled with the present tax policy discourage precisely the kind of reserves that are required to re-vitalize the economy by improving productivity and helping create jobs. High interest rates discourage the purchase of big items such as cars, trucks, and homes. Even though new car prices have increased slower than the consumer price index, interest rates and the resulting longer period of finance have thus increased the monthly payment itself faster than the CPI.

2. OSHA regulations: The time cost involved in meeting with inspectors, conducting inspectors on tours, and most importantly meeting requirements frequently cost a great deal versus minimal additional safety to the work place.

3. FTC advertising regulations are also a problem. The high cost and time in preparing advertisements and retaining legal counsel to be sure the ads do meet legal requirements.

4. Fuel economy: The administration has announced that it does not intend to impose post-1985 fuel economy standards. This makes sense! They should be applauded for this because quite obviously, the market is moving faster than the federal regulations. At the same time, we should suggest that it be looked to as an example of getting rid of regulations that are not necessary because the objectives are going to be achieved without them.

5. Recalls: Recalls are concerned it seems less than even handed approach by NHTSA who have requiring and publishing re-calls domestic verses foreign manufacturing recalls. In addition many of the recalls seem to be for minor items which really seem unnecessary and to that extent it can damage the reputation of the industry as a whole and particularly the manufacturer and the dealers are affected.

6. Federal taxation policy: Current tax and depreciation policy regulations tend to discourage investments that are necessary in order to improve productivity and create jobs. Excelerated depreciation for vehicles would be important because it would benefit the purchaser by reducing his cost of making the purchases and it would excelerate sales and therefore the retirement of older, high polluting, high fuel consumption vehicles.

7. Taxation policy should also be changed with respect to the estate taxes, so the dealers and other small businessmen can pass the businesses that they have built up over the years off to their heirs.

8. Support for the "Heinz-Pickle bill": Shift the Federal excise tax on medium and heavy trucks and parts from the manufacturer who pays it at the present time to the consumer at the time of sale. Dealers who benefit by not having to pay the floor plan interest on the 10 percent of the price of trucks and parts that is represented by the tax.

TESTIMONY OF BEVERLEY H. JOHNS, PRESIDENT, ILLINOIS COUNCIL FOR EXCEPTIONAL CHILDREN

My name is Beverley Johns and I am the President of the Illinois Council for Exceptional Children (ICEC). ICEC is the largest professional group representing the handicapped and gifted in the State of Illinois. Our membership is over 4300 special educators. We greatly appreciate your past support, Senator Percy, for handicapped children and their education.

PL 94-142 ESSENTIAL

ICEC is committed to the intent of the Education for All Handicapped Children Act of 1975, which requires states to make a free appropriate public education available for all handicapped children. PL 94-142 attempted to assure the efforts of the states to educate the handicapped. The act specifies activities that schools must engage in to ensure that handicapped children receive the rights that they have been guaranteed. Important items in the act include the concepts of: (1) child identification procedures, (2) the individualized education program (IEP), (3) parental involvement in the educational process, (4) due process procedures, and (5) to the extent it is in the child's best interest, each handicapped child be educated with non-handicapped children.

It is the belief of ICEC that PL 94-142 is a necessary and vital law to ensure an education program for all handicapped children. More children are being served in programs, and we believe it is due largely to PL 94-142. Prior to implementation of 94-142, in 1976 the U. S. Office of Education estimated that 1 million children were not attending school

at all. In Illinois, which has served in a leadership role in special education, more children are being served in programs--spending more than 50% of their school day in special education. The Illinois State Board of Education has prepared figures that show this increase. In the 1975-76 school year 42, 827 elementary children and 21, 218 secondary students were being educated in a special education program. In the 1980-81 school year 49,812 elementary students and 29,763 secondary students were receiving special education.

Representative William T. Gooding, a former public school principal and superintendent in York County, Pennsylvania and now a U. S. Representative from that state has stated: "As a school administrator in the past, I know that I didn't take care of the special needs of youngsters very well because it wasn't something you could easily sell to our school board and to your local taxpayers. And so we didn't really do a very good job with the handicapped and underprivileged." In these days of "tremendous budget crunches" on state and local levels, he continued, "there is no assurance that these special needs will be met unless some kind of pressure is exerted by the federal government."

REVISION NECESSARY

Regulations, we believe, are an important and necessary part of accountability by the states but we also believe that all regulations need to be updated and revised periodically after being in place a period of time. We believe the time for the update is now and the input is needed from professionals in the field of special education. Thus this testimony represents input from special educators who have worked before PL 94-142

and with it, who understand strengths and weaknesses of the regulations, and who recommend the following regulatory changes. We will speak of the regulations in a broad context.

EDUCATIONAL PROGRAM

The concept of "free appropriate public education" is one we believe in and that delineates that the responsibility for a student's educational program is that of the local school district. It should be recognized that in the total programming for a student it is the responsibility of the parents, the local school district, and other agencies involved in services to the student. The role of the school district for payment of non-medical care, room, and board placed in residential programs needs to be clarified. A determination of what constitutes educational services needs to be made by the Federal Government. "Free appropriate" should be related to educational needs of the child. School systems should not be required to meet every life need of a handicapped child. Inequities exist in costs for programs for students, particularly within private facilities. For example, $40,000 is being paid to educate a child when a like education is provided a similarly handicapped child for $12,000.

MILDLY HANDICAPPED

It is our belief that the "mildly handicapped" students--those often placed in the specific learning disabilities category need to continue to be served. While we need to refine our identification procedures of these students and this may be left up to the state, we need to continue to serve them. Educational quality for these children comes from contact and involvement whether direct or indirect from the resource LD teacher. Regular education has not changed so much that the classroom teacher can

provide adequately for the mildly handicapped without the assistance of the resource teacher. If we do not provide services to the "mildly handicapped" they may become "moderately handicapped". Isn't a preventive approach a better one?

INDIVIDUALIZED EDUCATION PROGRAM

It is our belief that the Individualized Education Program (IEP) for each child is essential. The IEP guarantees that the individual needs of the child are addressed. It is a viable means of objectively accounting for our programming results. At the same time the extent of the IEP and those involved in the IEP meeting should be left to the States. It is also possible that since the IEP is just that (individual), it may not need to be rewritten in total annually but rather every other year depending upon the changing individual needs of the students.

LEAST RESTRICTIVE ENVIRONMENT

The concept of the least restrictive environment is one which should be implemented by the states. We must remember that the law states (to the extent it is in the child's best interest) that the handicapped child should be educated with non-handicapped students. It does not state that every student, particularly the severely handicapped, can or should be mainstreamed. We cannot use the concept of "mainstreaming" or "least restrictive environment" as an excuse to not provide services to children with special needs.

PARENTAL INVOLVEMENT

We believe that parental involvement in the child's educational program is an important concept. Schools should continue to notify parents of findings concerning their children and should also include parents in

the process of deciding how and under what circumstances their children will be educated.

PSYCHOLOGICAL REEVALUATION

Frequency of reevaluation for each student has produced an undue hardship on certain school districts faced with a shortage of diagnostic personnel. Regulations such as this should be left to the states.

DUE PROCESS

The concept of due process must be preserved in order to assure that the rights of handicapped children are recognized. The opportunity for a hearing for either the parent or the school district needs to be provided if there is dissatisfaction by either party about the child's placement.

PAPERWORK BURDEN

Reporting procedures should be streamlined to decrease the burden of paperwork on all parties concerned and repetitive reporting should be eliminated. Federal Government Regulations should complement State Regulations thereby providing more flexibility to the states. Federal Regulations should focus upon outcomes--not specific detailed procedures that do not address outcomes. Federal Regulations should provide basic minimum program requirements that must be met to receive funding. State agencies can then deal with the specific requirements and work to assure quality programs. Monitoring by the Federal Government can assure program requirements are met.

We must continue to work together--the Federal Government, State Education Agencies, and the local school districts, to achieve the best services possible for our handicapped children. ICEC is willing to provide additional information based on the fact that our members are out in the field seeing the practical, day-to-day results of PL 94-142. We greatly appreciate the opportunity to share our ideas on this important subject.

ILLINOIS NURSING HOME ADMINISTRATORS ASSOCIATION,
Lincoln, Ill., June 29, 1981.

GENTLEMEN: My testimony at Senator Percy's hearing pertains to reducing the amount of government regulation by H.H.S. in the long term care industry. Basically the development and implementation of these regulations costs long term care facilities tens of thousands of dollars without substantially improving patient care. These regulations create more paper work for the facilities and concentrate on the building structures more than on resident care. I think it is a tragedy that the Federal Government writes and develops regulations which do not improve patient care due to a lack of payment through the State's medicaid program.

I would also like to complain about the Federal Government's operation of long term care facilities. Attached is a letter which explains my position on the double standard of the policies of the Reagan administration.

In closing I would like to emphasize that the government continues to regulate and overregulate the health care industry while simultaneously subsidizing its long term care facility because it cannot meet the expenses of complying with the State and Federal regulations. This is a classic example of how poorly the Federal Government operates itself in the health care field.

Sincerely,

R. A. LIGON, *Administrator.*

Attachment.

JACKSON COUNTY NURSING HOME,
Murphysboro, Ill., June 9, 1981.

Mr. DAVID STOCKMAN,
Old Executive Office Building,
Washington, D.C.

DEAR MR. STOCKMAN: I am writing to you concerning the status of a long term care facility in Carbondale, Illinois. It seems that this facility, Southern Manor, is operated by H.U.D. and that there are no plans for them to sell, lease or dispose of this operation in the near future.

I will personally work with H.U.D. to develop and maintain good community nursing homes but I do not feel that the continued operation of Southern Manor is in the best interest of the maintenance of good community nursing homes. I feel that it is unfair for the Federal Government to continually broadcast the message that it does not want to compete or replace the private sector of business and then being doing just the opposite. The Reagan administration's continued operation of this nursing home does not reflect its policy line.

If Southern Manor remains open and continues to compete for both residents and employees I feel it will jeopardize the continued operation of the Jackson County Nursing Home and other nursing homes in the area. The county and private homes cannot compete with the benefits and wages that the Federal Government can offer the employees at Southern Manor and yet we must all meet the same Federal and State guidelines. I am very interested in the future plans for Southern Manor and its operation. Any information that you could forward me would be appreciated.

Thank you for your time and cooperation in this matter.

Sincerely,

R. A. LIGON, *Administrator.*

UNITED AUTOMOBILE, AEROSPACE AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,
June 26, 1981.

Hon. CHARLES H. PERCY,
U.S. Senator, Dirksen Senate Office Bldg.,
Washington, D.C.

DEAR SIR: As President of U.A.W. Local 974 (active 26,000 Retired Members); and at the recommendation of my membership, I am writing to express our concern on the issue of Regulatory Reform.

The health, safety and work environment of American workers has improved under the O.S.H.A. program. American workers, union and non-union, also benefit from the work done across our country by the N.L.R.B., E.E.O.C. and other agencies.

We submit that these agencies and others like them should not be dissolved, nor their purposes abandoned in the cause of Regulatory Reform.

Sincerely,

JAMES B. O'CONNOR,
President, Local 974, U.A.W.

FORT DEARBORN LITHOGRAPH CO.,
Chicago, Ill., July 28, 1981.

Hon. CHARLES PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: As you recall President Reagan pledged relief to American business from unnecessary and burdensome federal regulations. Your own efforts in supporting this position are well known.

One area which may have escaped your attention, but which is enormously burdensome to both industry and consumer alike, is food labeling. American consumers are spending millions of dollars paying for the continual changes required by federal agencies. The benefits of these regulations are peripheral at best.

The regulation of labeling has become so exaggerated at this time that at lease four different agencies currently enforce conflicting decrees. These agencies are:

1. Food and Drug Administration;
2. Department of Agriculture;
3. Federal Trade Commission; and
4. Environmental Protection Agency.

It is absurd to assume that anyone benefits from this runaway "rule by decree". Neither Congress or the American voter ever intended to abdicate their own good judgment in favor of endless and confusing regulations.

Senator Percy, the American food processors have no desire to deprive consumers of meaningful information, on the contrary, information is their most important marketing tool.

It would be a simple matter to outline specific cases of waste and confusion. To do so would only lengthen this letter to the size of Federal Code 21. This is not my desire. Rather, I request that as part of fulfilling the President's pledge let's cut the "business as usual" and make some meaningful changes at these agencies. Specifically, let's put some restraint and control over the authority of agencies and their ability for rulemaking. With regard to labeling laws, let's put a sense of reality back into government.

Thank you for your time and consideration.

Regards,

CLIFFORD T. CRESTODINA,
Executive Assistant to the President.

RICHARD L. MOORE,
Timewell, Ill., June 22, 1981.

Hon. CHARLES H. PERCY,
Senator, Committee on Governmental Affairs.

DEAR SIRS: My name is Richard L. Moore, age 62. At present I am CEO and President of Timewell State Bank, Timewell, Ill. I started my banking career July 12, 1938, almost 43 years ago, as a clerk at $50.00 per month.

Years ago the condition of the banks assets were the first concern. Now the great concern is fear and harassment of Government compliance to the many many hundreds of pages of rules and regulations which are sent almost weekly.

It used to be a privilege and honor to operate a bank. Now it is a pain in the butt. Country Bankers who are friends of mine, almost to the man are eager to get out. Unless you are large enough to set up a full time department on compliance, it is impossible to keep up. We have been fortunate, so far, only warning and threats, no one has served any time in prison.

I am sure the banking industry could serve the public better and cheaper if the shackles of mnay regulations could be eased.

Respectfully,

RICHARD L. MOORE,
President, Timewell State Bank, Timewell, Ill.

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